

PROVIDER COMPENSATION SUBSYSTEM AGREEMENT

BETWEEN

STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES

AND

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PROVIDER COMPENSATION SUBSYSTEM AGREEMENT

This Provider Compensation Subsystem Agreement (the “Agreement”) is entered into as of the ____ day of _____, 200_ (the “Effective Date”, as described further below), by and between the State of Washington, acting by and through the Department of Social and Health Services, an agency of Washington State government (“DSHS”), and _____, a _____ [corporation/limited liability partnership] (“Contractor”, as described further below).

RECITALS

DSHS issued Request for Proposals #08-331 (“RFP”) that was dated December _____, 200_ to initiate a project for a new provider compensation information system to replace its current systems, and that is incorporated into the Agreement by this reference;

In response to the RFP, Contractor submitted a proposal that is dated _____, 200_ and that is defined further below;

Contractor proposed to provide use of the System through an application service provider (“ASP”) service;

DSHS evaluated the proposal and identified Contractor as the apparently successful bidder for its project;

Contractor desires to enter into an agreement with DSHS to meet the needs of DSHS for such a new system and associated services; and

DSHS and Contractor have agreed that the terms and conditions of this Agreement shall govern Contractor’s furnishing to DSHS the new system and associated services.

Therefore, in consideration of the foregoing premises and the mutual promises and covenants as set forth below, the parties agree as follows:

1. Definitions. The following terms as used throughout this Agreement shall have the meanings as set forth below.

1.1 “Acceptance”: A Notice from DSHS to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the process described in Section 7.3.

1.2 “Acceptance Criteria”: The Specifications which will be described in DEDs and against which each Deliverable and Service shall be evaluated in accordance with Section 7.3 and DSHS’s satisfaction for Services which are not subsumed in a Deliverable.

1.3 “Acceptance Tests”: The tests or reviews that are performed by DSHS to determine there are no Deficiencies in the Deliverables or ASP Services and that must be satisfied before Acceptance can occur as set forth in Section 7.3.

1.4 “Application Software”: The Contractor Software and Third-Party Software licensed or sublicensed to DSHS from Contractor.

1.5 “Application Software Configuration(s)”: Set up and customization of application software configuration items such as business rules, workflows, tables, table structures, schema, personal calculation rules, functions, features, operations, infotypes (i.e. screens), drop downs and reports all without utilizing programming language, database queries or altering the Software Source Code.

1.6 “ASP Services”: The services that Contractor shall provide by or through the System during the Term, as described in the Response and Deliverables, including without limitation the Detailed System Design Deliverables.

1.7 “Availability”: The time that the System and ASP Services, in whole and in part, are Operational, as measured 24 hours a day, Monday through Sunday, on a monthly basis. Availability shall be as described in Exhibit C, except for mutually agreed upon scheduled maintenance activities.

1.8 “BAFO(s)”: Contractor’s best and final offer(s), dated _____.

1.9 “CBA”: A Collective Bargaining Agreement.

1.10 “Change Order”: A written form, in response to a Change Request, that is mutually agreed to in writing by DSHS and Contractor, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 14.

1.11 “Change Request”: A written form that is used to modify, delete or add to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 14.

1.12 “Charges”: The amount(s) to be paid for Services authorized under this Agreement, in whole or in part, as described in Exhibit A.

1.13 “Client”: The individual who receives services from the Provider. For tax and similar payment purposes, the Client is considered the employer and the Provider the employee.

1.14 “CMS”: The Centers for Medicare and Medicaid Services.

1.15 “Collective Bargaining Agreement”: An agreement between the State and a union for providers that are being paid by or through the System and ASP Services.

1.16 “Confidential Information”: Various trade secrets and information of each party that either Contractor or DSHS desires to protect against unrestricted disclosure including without limitation DSHS non-publicly available Data, nonpublic Specifications, the Software (subject to Chapter 42.56 RCW) or other State or federal statutes, State security data, any nonpublic information or documentation concerning either party’s business or future

products or plans that are learned by the other party during the performance of this Agreement, and information that is designated as confidential by the disclosing party and, subject to Section 18.1.2, that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other State or federal statutes. The following are hereby designated DSHS Confidential Information: client and employee personal information, including but not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, and law enforcement records, and such other Confidential Information as is described in this definition. Contractor's Technology shall be Contractor Confidential Information.

1.17 "Confirmation": DSHS's receipt of notice and full supporting and written documentation (including without limitation test results) from Contractor that Contractor has, as applicable: completed or pre-tested a Deliverable in accordance with its Acceptance Criteria in a DED, including but not limited to the System and ASP Services; and confirmed the Deliverables, including but not limited to the System and ASP Services, are ready for applicable Acceptance Tests.

1.18 "Contractor": _____, its employees and agents.

1.19 "Contractor Executive Account Manager": The individual chosen by Contractor with management responsibilities for Contractor, as described in Section 4.4.

1.20 "Contractor Project Manager": The individual chosen by Contractor and approved by DSHS with management responsibilities for Contractor, as described in Section 4.2.

1.21 "Contractor Software": All computer programs which were developed and owned by Contractor or Subcontractors prior to the Effective Date or which are developed during the term by Contractor staff in performing work that is not for the Project and any modifications thereof and derivative works based therein, and the documentation used to describe, maintain and use such Contractor Software.

1.22 "Contractor Technology": Intellectual property owned by Contractor prior to the Effective Date (including modifications, enhancements or improvements to such intellectual property developed hereunder), including: Contractor's proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines; the Contractor Software; and Contractor's Proprietary Information.

1.23 "Contractor Work Plan": The work plan that is submitted by Contractor with its Response and that is submitted for DSHS's review as provided in Section 7.2.1.

1.24 "Conversion": The Services performed by Contractor for converting historical and other Data for Processing by the Software and System as described in Section 2.1.2.3 of the RFP and of the Response.

1.25 "Converted Data": The Data which has been successfully converted for Processing by the System.

1.26 “Critical Event(s)”: The events and Deliverables listed as such in Exhibit A.

1.27 “Custom Software”: Software, including without limitation Interfaces, designed, developed or produced by Contractor under the Agreement, but excluding Contractor Software.

1.28 “Data”: DSHS’s records, files, forms, data and other documents, including but not limited to Converted Data.

1.29 “days”: Calendar days, unless otherwise indicated.

1.30 “DDP”: Design, development and Implementation.

1.31 “Deficiency”: A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to its Specifications, or a failure to conform to reasonable commercial or industry standards for appearance or format.

1.32 “Deliverable(s)”: Contractor’s products that result from the Services and that are prepared for DSHS (either independently or in concert with DSHS or third parties) during the course of Contractor’s performance under this Agreement, including without limitation deliverables which are described in Exhibit A and in Sections 2, 4.6 and 7.6 of the RFP and Binder #1 Section 2 of the Response, work produced under Change Orders, and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such products.

1.33 “DED(s)”: Deliverable expectation documents that describe Acceptance Criteria for each Deliverable.

1.34 “Detailed System Design Deliverables”: The Deliverables containing the detailed designs for the System. The Deliverables will include but not be limited to design documents such as for technical and functional designs, for the Custom Software and for the Configuration, the user interface designs, detailed design Specifications for each Software module inclusive of purpose, logical flow, inputs, outputs, Interfaces and unit test conditions, the physical database design based on detailed design Specifications, Software module designs and associated planned test conditions, and the design for the System to meet Performance Standards.

1.35 “Documentation”: All operations, technical and User manuals used in conjunction with the System, in whole and in part, and documentation of the Equipment and Software Configurations, including without limitation manuals provided by licensors of the Third-Party Software.

1.36 “Downtime”: The time during which the System and ASP Services are not performing their business operations or functions in accordance with applicable Specifications, measured on a monthly basis. Downtime begins when DSHS notifies Contractor that the System and ASP Services, in whole and in part, fail to be Operational. Downtime continues until DSHS determines the System and ASP Services, in whole and in part, have been returned to Operational status in accordance with applicable Specifications.

1.37 “DSHS”: The Washington State Department of Social and Health Services, any division, section, office, unit or other entity thereof or any of the officers or other officials lawfully representing DSHS.

1.38 “DSHS Project Director”: The person designated by DSHS to be responsible for financial and contractual matters regarding the Agreement, including but not limited to, the person to whom DSHS signature authority has been delegated in writing. The terms includes, except as otherwise provided herein, an authorized representative of the DSHS Project Director acting within the limits of his/her authority.

1.39 “DSHS Project Manager”: The person designated by DSHS to be responsible for day-to-day management of DSHS resources for the Project and monitoring the status of Contractor’s performance under the Agreement.

1.40 “Effective Date”: The date of execution of the Agreement by DSHS following Contractor’s execution of the Agreement and CMS’s approval of the Agreement.

1.41 “Enhancements”: All updates, upgrades, additions, and changes to, and future releases for the Application Software in whole or in part, including without limitation: (1) updated versions of the Application Software to operate on upgraded versions of firmware or upgraded versions of Equipment; and (2) updated versions of Application Software that encompass improvements, extensions, updates, Deficiency and other error corrections, or other changes that are logical improvements or extensions of the Application Software supplied to DSHS. In addition, Enhancements will also include changes to the Software as described in Section 12.5.2.

1.42 “Equipment”: The computer equipment on which the Software shall operate, all operating system software for use with such equipment, and telecommunications network facilities and services, all of which are to be provided and owned by Contractor and which are listed in Exhibit B.

1.43 “Executable Code”: The version of the Software which is generated by an assembler from the Object Code of the Software and which will be installed and operated on the Equipment.

1.44 “Federal Financial Participation”: The Federal government’s share of an expenditure made by under the Agreement.

1.45 “First Call Resolution”: Contractor’s addressing a customer's need the first time the customer calls the help desk, thereby eliminating the need for the customer to follow up with a second call.

1.46 “FOB”: Free on board or freight on board.

1.47 “Go-Live”: As further described in the Integrated Work Plan, the event(s) that occurs after Acceptance of the System and DSHS decides to put the System, in whole or in part, into Production.

1.48 “Holdback”: The payment amounts held back by DSHS from each Deliverable Purchase Price, as described in Section 3.4, if DSHS pays for Deliverables during DDI.

1.49 “Implementation”: The process for making the System, in whole and in part, fully Operational in DSHS for Processing the Data in DSHS’s normal business operations. Implementation shall be completed when Contractor has completed the Implementation Services according to the Implementation Plan.

1.50 “Implementation Plan”: A plan prepared by Contractor as a Deliverable that details the transition from design and development of the System to full operation of the System and ASP Services by DSHS in accordance with applicable Specifications.

1.51 “Initial Term”: The time period described in Section 2.1.

1.52 “Integrated Work Plan”: The overall plan of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the Project, as described in Section 7.1 and as updated in accordance with Section 7.2 and Section 7.3 of this Agreement. The Integrated Work Plan shall be incorporated herein by this reference, and each revised Integrated Work Plan shall be incorporated herein upon its Acceptance by DSHS.

1.53 “Integration Testing”: Functional, integration, load and performance testing that is performed on the System and ASP Services by Contractor so that Contractor can provide Confirmation of the readiness of the System and ASP Services for User Acceptance Testing by DSHS and that is completed after Contractor has completed System Testing and integrated the Application Software, Custom Software, Data and Equipment as the System.

1.54 “Interfaces”: Custom Software that is developed by Contractor for transmitting Data between the System and other systems.

1.55 “Key Staff”: Contractor’s key personnel listed on Exhibit A.

1.56 “Letter of Credit”: A letter of credit securing Contractor’s performance of its Agreement obligations and other potential liabilities to DSHS from the Effective Date until the end of the Warranty Period for the System, as described in Section 15 and in Exhibit E.

1.57 “Maximum Amount”: The maximum amount payable by DSHS to Contractor under this Agreement as described in Exhibit A.

1.58 “Notice”: A written document given by a party to the other in accordance with Section 22.22.

1.59 “Object Code”: The binary code version of Source Code that has been processed by a compiler.

1.60 “OFM”: The Washington State Office of Financial Management.

1.61 “Operational”: The condition when the System and ASP Services, in whole and in part, are fully functional in accordance with applicable Specifications and usable for their purposes in the daily operations of DSHS, and all of the Data has been loaded into the System and is available for use by DSHS.

1.62 “Performance Standards”: The standards to which the System shall perform during Acceptance Tests and the remainder of the Term, as described in the RFP and Exhibit C and as otherwise agreed to by the parties in writing.

1.63 “Pacific Time: Pacific Standard Time or Pacific Daylight Time, as applicable.

1.64 “Processing”: The performance by the Software residing on the Equipment of logical operations and calculations on the Data.

1.65 “Production”: Actual use of the System and ASP Services by DSHS in its daily business operations, after Go-Live.

1.66 “Project”: The planned undertaking regarding the DDI activities for the Agreement.

1.67 “Property”: All DSHS Equipment and other DSHS real and personal property.

1.68 “Proprietary Information”: (i) with respect to Contractor, the Contractor Technology; (ii) with respect to DSHS, the Custom Software; and (iii) information that either party clearly identifies as its proprietary information excluding, any part of the Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party unless such party’s act or failure is a breach of a confidentiality obligation applicable to the information; (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; (c) becomes independently available to the other party as a matter of right; (d) was previously known and rightfully acquired at the time received from the other party; (e) is developed by one party independently of any disclosures made by the other party of such information; or (f) is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

1.69 “Provider”: A person or a facility, who has contracted with DSHS to provide care services to one or more persons, i.e., Clients, under programs administered by DSHS.

1.70 “Purchase Price(s)”: The price(s) for the purchase of each Deliverable, in whole or in part, as described in Section 3.1 and, if applicable, Exhibit A.

1.71 “RCW”: The Revised Code of Washington.

1.72 “Renewal Term”: A two year period.

1.73 “Report(s)”: Documents provided by Contractor to DSHS regarding Project activities, events and Services provided.

1.74 “Response”: Contractor’s response to the RFP, which was dated _____, as amended, including but not limited to Clarifications dated _____, the BAFO, the management and technical interviews dated _____, and information provided by Contractor at the demonstration as described in RFP Section 5.8 and the oral presentation as described in RFP Section 5.8 and which is incorporated into this Agreement by this reference.

1.75 “Schedule”: The dates described in the Integrated Work Plan for deadlines for performance of Services and other Project events and activities.

1.76 “Self-Help Code”: Any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

1.77 “Services”: The tasks and services to be performed by Contractor on the Project, as described in the Agreement, including without limitation Project management, testing, production and delivery of the Deliverables, Training, Warranty Services, and ASP Services.

1.78 “Site(s)”: The location(s) for the DSHS or Contractor Equipment and Software, as agreed to by DSHS.

1.79 “Software”: The Application Software, the Custom Software, and all Enhancements.

1.80 “Source Code”: The series of instructions to the computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is easily comprehensible to appropriately trained persons who translate such instructions into Executable Code which then directs the computer to perform its functions.

1.81 “Specifications”: The technical and other written specifications that define the requirements and are used to define the Acceptance Criteria for each Deliverable, as described in (i) the RFP, (ii) the Response, (iii) subsequent Deliverables which have received Acceptance, (iv) the Performance Standards, (v) the Documentation, (vi) all applicable State and federal policies, laws, regulations, usability standards, e.g., the American Disabilities Act (ADA), Older Americans Act, and the Rehabilitation Act Section 508 Subpart B Section 1194.21 et seq, and (vii) the requirements of the Internet Guidelines and Standards as defined in the DSHS NetGuide and in the Rehabilitation Act Section 508 Subpart B Section 1194.22. The Specifications are, by this reference, made a part of this Agreement, as though completely set forth herein.

1.82 “Staff”: Contractor’s employees, Subcontractors and agents who shall provide the Services on behalf of Contractor.

1.83 “State”: The State of Washington, including without limitation DSHS and all of the State’s other agencies.

1.84 “Subcontractor”: A person, partnership, company, or other entity that is not in the employment of or owned by Contractor and that is performing Services under this Agreement under a separate Agreement with or on behalf of Contractor.

1.85 “Switch Vendor”: The network vendor engaged by Contractor to provide the network between the Contractor hosted Software and the network demarcation point at the State.

1.86 “System”: The complete collection of all Software that is integrated and functioning together with the Data in accordance with the applicable Specifications and on the Equipment and that is necessary to enable Contractor to provide the ASP Services in accordance with the Agreement, including without limitation the Web Portal, all Web Portal web pages, non-Web Portal web pages, and the interactive voice response functionality.

1.87 “System Testing”: Functional testing that is performed on subsystems in a stand alone fashion by Contractor so that Contractor can provide Confirmation of the readiness of the subsystems for Integration Testing and that is completed after Contractor has completed design and development of the Custom Software for each subsystem.

1.88 “Term”: The Initial Term and the Renewal Term(s).

1.89 “Third-Party Software”: Software that is developed by third parties (not including Subcontractors) and that is generally distributed for commercial use and not specifically designed or developed for DSHS, including without limitation operating system software, tools, utilities, and commercial-off-the-shelf software.

1.90 “Training”: The training Services to be provided by Contractor to DSHS, as described in Sections 2.1.2.8, 4.6.1, and 7.6.7 of the RFP and Response and any Training Deliverable.

1.91 “Unauthorized Code”: Any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

1.92 “User(s)”: Parties who will have use of and access to the System and ASP Services.

1.93 “Warranty Period(s)”: The 12-month period following Acceptance of each Deliverable, during which Contractor shall provide Warranty Services, subject to extensions for Deficiency correction periods.

1.94 “Warranty Services”: The Services to be provided to DSHS by Contractor during the Warranty Period(s) as described in Section 2.

1.95 “Web Portal”: A mechanism for DSHS to enable the Providers secure access to selected information from the System and a method of making secure data entry into the System, running queries from the System or performing certain tasks with the System.

2. Term

2.1 Initial Term. The Initial Term shall begin on the Effective Date and shall continue for six years, subject to earlier termination as provided herein.

2.2 Renewal Terms for ASP Services. Thereafter, DSHS reserves the right to renew the term of this Agreement for up to two, two year successive Renewal Terms for the ASP Services. DSHS shall provide Contractor with Notice if it exercises this right.

3. Financial Matters.

3.1 Purchase Prices. The parties acknowledge that DSHS shall pay for Deliverables during DDI as part of the Charges for the Services. However, if DSHS and Contractor agree in writing that DSHS will pay Purchase Prices directly for any such Deliverables: (i) such Purchase Prices shall be included in Exhibit A; (ii) Contractor shall have the right to issue invoices on a monthly basis during DDI in the amounts which are then noted in Exhibit A for Deliverables which have received Acceptance in the prior month; (iii) such invoices will reflect the Holdback amounts which shall be due and payable as provided in Section 3.4; and (iv) except as otherwise provided herein and subject to DSHS’s receipt of a correct invoice and to DSHS’s exercise of its rights and remedies, DSHS shall pay Contractor the fixed Purchase Price for each Deliverable as described on such invoices that are issued in accordance with the terms of this Agreement within 30 days of receipt of such invoices.

3.2 Charges. Except as otherwise provided herein and subject to DSHS’s receipt of a correct invoice and to DSHS’s exercise of its rights and remedies, DSHS shall pay the Charges for the Services which are described in Exhibit A within 30 days of receipt of such an invoice for Services provided in the previous month, including but not limited to ASP Services.

3.3 Maximum Amount. The Maximum Amount payable under the terms of this Agreement shall be as set forth in Exhibit A.

3.4 Holdback. If DSHS pays Purchase Prices for Deliverables during DDI: (i) DSHS shall retain a Holdback of 10% of the Purchase Price for each Deliverable which has received Acceptance; and (ii) DSHS will pay Contractor the Holdback within 30 days following receipt by DSHS of an invoice which is issued in accordance with the terms of this Agreement following Acceptance of the System and Deliverables which have received Acceptance in accordance with the Integrated Work Plan.

3.5 Transportation and Insurance Charges. Contractor shall pay the costs associated with transportation, delivery and insurance for each Deliverable, if any.

3.6 Taxes. DSHS shall pay Contractor for any sales or use taxes imposed on the Services and/or Deliverables if DSHS receives an invoice from Contractor for such taxes within one year of the due date. Contractor must pay all other applicable taxes including, but not limited to, taxes based on Contractor's income or revenue or personal property taxes levied or assessed on Contractor's personal property to which DSHS does not hold title.

3.7 Contractor Expenses. Contractor shall pay Contractor's out-of-pocket expenses incurred in connection with providing the Services and shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, travel and per diem for its Staff.

3.8 Invoices. Contractor shall submit correct invoices to the DSHS Project Manager during the Project and the DSHS Project Director for all Charges, Purchase Prices and other amounts to be paid by DSHS hereunder. All invoices submitted must meet with the approval of the DSHS Project Director (or their designees) prior to payment. Contractor shall only submit invoices for Services or Deliverables, if applicable, as permitted by this Section 3.8 of the Agreement. Incorrect or incomplete invoices will be returned by DSHS to Contractor for correction and reissue. The Agreement and purchase order number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement. Invoices must reference this Agreement and provide detailed information and in a format as requested by DSHS, including without limitation:

3.8.1 Contractor name, address, telephone number and federal tax identification number;

3.8.2 An itemization of each Deliverable, if applicable;

3.8.3 The Deliverable for which payment is sought, and the Acceptance date triggering payment, if applicable;

3.8.4 Applicable Purchase Prices, if applicable, and Charges;

3.8.5 Date of delivery and/or date of installation, as applicable;

3.8.6 Any other Project costs with a detailed, itemization of such costs, if applicable;

3.8.7 Sales or use taxes, if applicable;

3.8.8 Credits and liquidated damages, if any; and

3.8.9 Total amount due.

3.9 Funding.

3.9.1 The parties acknowledge and agree that this Agreement is dependent upon the availability of federal and State funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the federal

government and/or the State for the Agreement, or is not allocated or allotted to DSHS by the federal government and/or the State for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of DSHS to make payments after the effective date of such nonallocation or nonfunding will cease and terminate.

3.9.2 If funding to make payments in accordance with the provisions of this Agreement is delayed or is reduced from the federal government and/or the State for the Agreement, or is not allocated or allotted in full to DSHS by the federal government and/or the State for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of DSHS to make payments will be delayed or be reduced accordingly or DSHS shall have the right to terminate the Agreement as provided in Section 21.6. If such funding is reduced, DSHS in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed, with Contractor's Charges for such Services and Purchase Prices for associated Deliverables determined in accordance with those in Exhibit A. In these situations, DSHS will pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Section 21.6.3 and Section 21.8. Any obligation to pay by DSHS will not extend beyond the end of DSHS's then-current funding period, except as otherwise provided in Section 21.6 and Section 21.8.

3.9.3 Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, DSHS in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

3.10 Most Favored Customer. Contractor agrees all the prices, terms, rates, warranties, and benefits granted by Contractor are comparable to or better than the terms, prices, warranties and benefits, being offered by Contractor to any present customer meeting similar qualifications or requirements as DSHS. Except as otherwise herein provided, if Contractor shall, during the term of this Agreement, enter into arrangements as a whole with any other similar customer providing greater benefits or more favorable terms than as provided herein for provision of same or similar services as provided to DSHS, Contractor shall be obligated to provide the same to DSHS.

3.11 Overpayments to Contractor. Contractor shall promptly, but in all cases within 30 days, pay to DSHS the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Contractor is not entitled.

3.12 Advance Payments Prohibited. No advance payment shall be made for goods or Services furnished by Contractor pursuant to this Agreement.

3.13 Credits. Any credits due DSHS under this Agreement may be applied against Contractor's invoices with appropriate information attached, upon giving of notice required herein, if any, by DSHS to Contractor.

3.14 Increases. Contractor shall not increase the Maximum Amount due from DSHS under this Agreement for all Services and Deliverables, Purchase Prices, or other Charges

during the Initial Term of this Agreement except as otherwise specifically described in this Agreement. Contractor may increase its ASP Charges at the end of the Initial Term for each Renewal Term, upon 90 days prior Notice to DSHS. Such Charges shall be increased no more than 5% per Renewal Term. If the Charges are increased, then, notwithstanding anything to the contrary contained herein, DSHS may upon 30 days prior Notice to Contractor, terminate this Agreement.

4. Project Management.

4.1 Reports and Meetings.

4.1.1 Contractor shall produce the Reports and the parties shall participate in the meetings described below and in Sections 2.1.2, 2.1.2.1, 2.1.2.2, 2.1.2.4, 2.1.2.7, 2.1.2.9, 2.1.2.10, 2.2, 2.3, 3.2.0, 4.4.1, 4.6.1, 7.3.5, 7.5.1.5, 7.5.1.7, 7.5.1.8, 7.6.1, 7.6.2, 7.6.3, 7.6.4, 7.6.5, 7.6.6, 7.6.7, 7.6.8, 7.6.9, 7.6.10, and 7.8.5 of the RFP and Response in person, except that such meetings may be conducted by telephone conference call, videoconference, and/or web conference in DSHS's sole discretion. All Reports shall be produced in formats approved by DSHS and delivered in accordance with the Schedule and the terms of this Agreement.

4.1.2 The Contractor Project Manager and other Key Staff shall attend weekly status meetings with the DSHS Project Manager and other members of DSHS's Project team during the Project. These weekly status meetings shall follow a preset agenda jointly prepared by the Contractor Project Manager and DSHS Project Manager, but will also allow both Contractor and DSHS to discuss other issues that may concern either party. Every other week, written status reports shall be provided by Contractor as described in RFP Section 2.1.2.1. Contractor's proposed format and level of detail for the status Reports shall be subject to DSHS's approval.

4.1.3 The Contractor Project Manager shall attend, at a minimum, bi-weekly change control and Integrated Work Plan review meetings of DSHS for the Project.

4.1.4 As reasonably requested by DSHS, the Contractor Project Manager shall assist the DSHS Project Manager in preparing and shall prepare special Reports and presentations related to the Project management. The Contractor Project Manager shall also provide or produce such Reports or information as are reasonably requested by the DSHS Project Manager regarding the Project.

4.1.5 After Go-Live, the parties shall mutually agree upon when to hold meetings while ASP Services are in Production.

4.2 Contractor Project Manager.

4.2.1 Contractor shall assign to the Project a Contractor Project Manager of a management level sufficient to assure timely responses from all Contractor personnel and whose resume and qualifications will be reviewed and approved by DSHS prior to his or her appointment as Contractor Project Manager. The approval process may include, at DSHS's discretion, an interview with the proposed Contractor Project Manager. DSHS will

not unreasonably delay or deny approval of the Contractor Project Manager. The Contractor Project Manager shall be responsible for acting as a liaison with the DSHS Project Manager.

4.2.2 The Contractor Project Manager shall be fully qualified to perform the tasks required of that position under this Agreement. The Contractor Project Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Contractor Project Manager shall be able to make binding decisions pursuant to this Agreement for Contractor. The Contractor Project Manager shall be at the Site designated by DSHS as deemed necessary by DSHS until Go-Live. When not at the Site designated by DSHS, the Contractor Project Manager shall be available by telephone or e-mail.

4.2.3 The Contractor Project Manager shall not be changed from the person proposed in the Response, except as provided in Section 4.3.2. If the Contractor Project Manager is removed or replaced, Contractor will promptly provide Notice to DSHS, submit a resume, and obtain approval of the replacement Contractor Project Manager from DSHS, prior to his or her beginning work on the Project. DSHS reserves the right to interview the proposed Contractor Project Manager replacement prior to approving him or her.

4.2.4 Any written commitment by the Contractor Project Manager and persons designated by him or her in writing for this purpose, within the scope of this Agreement, shall be binding upon Contractor.

4.3 Contractor Staff.

4.3.1 As part of the Response pursuant to RFP Sections 4.3.12, 4.3.13, 7.3.1, 7.3.12 and 7.3.13, Contractor shall have provided to DSHS an organization chart of Contractor's Staff, including names of Key Staff for the Project and positions during ASP Services. Contractor shall also provide to DSHS job descriptions for Key Staff positions.

4.3.2 Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed during the Project from the people who were described in the Response and during ASP Services without the prior written approval of DSHS. During the term of the Agreement, DSHS reserves the right to approve or disapprove Contractor's and any Subcontractor's Key Staff assigned to this Agreement, to approve or disapprove any proposed changes in Key Staff, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by DSHS. Contractor shall provide DSHS with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed to be assigned to any aspect of the performance of this Agreement prior to commencing any Services.

4.3.3 All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills for performing the activities as performed by the Staff being replaced.

4.3.4 Contractor assumes sole and full responsibility for its acts and the acts of its personnel. Contractor understands and agrees that DSHS does not assume

liability for the actions of Contractor's Subcontractors or agents. Contractor agrees that it has no right to indemnification or contribution from DSHS for any judgments rendered against Contractor, its Subcontractors or agents.

4.3.5 Contractor agrees that any claims on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its Subcontractors) are the sole responsibility of Contractor and are not the responsibility of DSHS. Contractor will indemnify and hold DSHS harmless from any and all such claims asserted against DSHS. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from DSHS (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

4.4 Contractor Executive Account Manager.

4.4.1 Contractor shall assign to the Project a Contractor Executive Account Manager of a management level with sufficient authority to address Contractor's ability to meet project schedule, handle potential changes in project scope or costs, and address Contractor resource needs or challenges. The Contractor Executive Account Manager shall be responsible for acting as a liaison with the DSHS Project Sponsor and DSHS Project Director.

4.4.2 The Contractor Executive Account Manager shall be fully qualified to perform the tasks required of that position under this Agreement. The Contractor Executive Account Manager shall have management authority over the Contractor Project Manager and other Contractor Key Staff. The Contractor Executive Account Manager shall be able to make binding decisions pursuant to this Agreement for Contractor.

4.4.3 The Contractor Executive Account Manager shall not be changed from the person proposed in the Response, except as provided in Section 4.3.2. If the Contractor Executive Account Manager is removed or replaced, Contractor will promptly provide Notice to DSHS prior to his or her beginning work on the Project.

4.4.4 Any written commitment by the Contractor Executive Account Manager and persons designated by him or her in writing for this purpose, within the scope of this Agreement, shall be binding upon Contractor.

4.5 Reference and Background Checks. Due to the confidential nature of the information and materials which will be accessible to Contractor, DSHS shall have the right to conduct a reference check and a background check on Contractor Staff to be used to provide the Services. DSHS reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks, background checks, or additional sources of information.

4.6 Employment of State Personnel. Contractor shall not knowingly hire on a full-time, part-time, or other basis during the period of this Agreement any managerial, professional or technical personnel of DSHS that are or have been at any time during the term of

this Agreement in the employ of DSHS, except regularly retired employees, without the written consent of DSHS. Further, Contractor shall not knowingly engage on this Agreement on a full-time, part-time, or other basis during the period of this Agreement any retired employee who has not been retired for at least one year, without the prior written consent of DSHS.

4.7 Records Retention and Access Requirements.

4.7.1 Contractor shall agree to the conditions of all applicable DSHS, State and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, Contractor shall agree to the following terms regarding retention of records and access for DSHS, State and federal government officials.

4.7.2 Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of amounts billed to DSHS during the performance of this Agreement and shall retain all such records for six years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within six years from the date of expiration or termination of this Agreement.

4.7.3 All such records shall be subject at reasonable times and upon prior Notice to examination, inspection, copying, or audit by personnel so authorized by the Project Director and/or DSHS, State and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Agreement, access to these items will be provided within Thurston County. During the six year period after this Agreement term or one year term following litigation, delivery of and access to these items will be at no cost to DSHS. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

4.7.4 The records retention and review requirements of this section shall be included by Contractor in any of its subcontracts with Subcontractors. DSHS's personnel shall be accompanied by Contractor personnel at all times during any examination, inspection, review or audit. Contractor shall make no charges for services rendered in connection with an audit requested by DSHS.

4.7.5 Contractor shall provide right of access to its facilities to DSHS, or any of DSHS's officers or to any other authorized agent or official of the State or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this Agreement.

4.7.6 As part of the Services, Contractor shall provide, upon DSHS's request, a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services provided to DSHS under this Agreement.

4.8 Accounting Requirements. Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted

accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.

4.9 Supplemental Contracts. DSHS may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. Contractor shall cooperate with such other contractors and DSHS in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

4.10 SAS 70 Audit Report. Contractor shall provide DSHS with a copy of its most recently completed SAS70 Audit Report which covers Internal Controls (i.e., a SAS70, Type II Audit) at the time of contract signing. Contractor must disclose the frequency of all SAS70 Audits. Contractor shall provide DSHS with future SAS70 Audit Reports completed during the term of the Agreement within 60 days of completion of such reports.

4.11 DSHS Project Manager. The Contractor Project Manager's primary point of contact in matters of Project management shall be the DSHS Project Manager. The DSHS Project Manager or his or her designee or successor will manage this Agreement on behalf of DSHS and will be the principal point of contact for the Contractor concerning Contractor's performance under this Agreement. The parties acknowledge and agree that the DSHS Project Manager shall have no authority to modify the terms and conditions of this Agreement, make any financial commitment, or give approval for any action with financial affects or implications without approval of the DSHS Project Director, and is only given the authority to administer this Agreement as set forth in the preceding sentence except as authorized by the DSHS Project Director.

5. Services and Resources.

5.1 Performance. Contractor shall begin to perform the Services on the Effective Date. Contractor shall perform the Services as described in this Agreement in accordance with the Integrated Work Plan and to achieve the objectives described in this Agreement. Contractor and its Subcontractors (and their subcontractors at any tier) shall not perform any of the Services, directly or indirectly, outside of the United States.

5.2 Necessary Resources. DSHS shall provide Property and other resources and personnel as described in the RFP. Contractor shall provide the personnel and all other materials and resources necessary for the performance of the Services.

5.3 Ownership. Title to all Property furnished by DSHS shall remain in DSHS. Title to all Property purchased by Contractor, if any, for which Contractor has been reimbursed by DSHS under this Agreement, shall pass to and vest in DSHS upon the earlier of Acceptance of the applicable Deliverable in which the Property is included, or Acceptance of the System, unless otherwise provided in the Agreement.

5.4 Use of Property. Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the DSHS Project Manager, be used only for the performance of its obligations under and subject to the terms of this Agreement.

5.5 Damage to Property. Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's willful misconduct or negligent acts or omissions or from the failure on the part of Contractor to maintain and administer that Property in accordance with sound management practices. Notwithstanding anything to the contrary herein, Contractor shall be liable to DSHS for any damages resulting from damage to Property, which damages result from or are caused by Contractor's willful misconduct or negligence. Contractor shall ensure that the Property is returned to DSHS in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall repair or make good any such damage, destruction or loss at any DSHS Site, and shall do so without requesting contribution from DSHS or assistance from DSHS officers or employees.

5.6 Notice of Damage. Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the DSHS Project Manager thereof and shall take all reasonable steps to protect that Property from further damage.

5.7 Surrender of Property. Contractor shall surrender to DSHS all Property upon the earliest of expiration or termination of this Agreement.

6. Equipment.

6.1 Contractor Equipment. Contractor shall provide Equipment at Contractor's Site(s) in accordance with the Integrated Work Plan and as described in Section of the Response and at DSHS Site(s) as described in Section 7.5.2 of the RFP and Response as modified by Exhibit G of this Agreement. Contractor shall provide at least 60 days advance Notice to DSHS before Contractor moves its Equipment to another Site, and Contractor shall in such Notice provide DSHS information as is requested by DSHS to coordinate such move and avoid any negative impact from such move.

6.2 DSHS Equipment. DSHS shall provide desktop Equipment at DSHS's Sites for DSHS Users.

7. Deliverables.

7.1 General.

7.1.1 Contractor shall provide DSHS with the Deliverables during DDI according to the Integrated Work Plan, as mutually agreed upon in writing during ASP Services, and as described in the RFP, the Response, DEDs, and this Agreement. Contractor shall utilize the Specifications, DEDs, the Integrated Work Plan, the RFP, the Response, the Deliverables for which DSHS has previously granted Acceptance, Contractor's professional knowledge, and this Agreement as the basis of Deliverables.

7.1.2 All Deliverables shall be subject to DSHS's Acceptance, including without limitation Deliverables provided pursuant to Change Orders. Contractor shall retain backup copies in writing and on electronic media of all Deliverables until 180 days after termination or expiration of this Agreement and shall provide DSHS on its request with a copy thereof until that time.

7.1.3 Contractor shall deliver Deliverables pursuant to this Agreement on or before the applicable delivery dates in the Integrated Work Plan. All such deliveries made pursuant to this Agreement must be complete. Contractor shall deliver hard copy and electronic versions of the Deliverables in formats agreed to by the parties. All packages must be accompanied by a packing slip which identifies all items included with the shipment and DSHS's purchase order number. Contractor's delivery receipt must be signed by an authorized representative of DSHS for all deliveries made hereunder.

7.2 Integrated Work Plan.

7.2.1 DSHS shall control and maintain the Integrated Work Plan for the Project. The Integrated Work Plan shall be comprised of the Contractor Work Plan in the Response, as revised by Contractor and DSHS following the Effective Date, to reflect Project changes since Contractor's initial submission and the Integrated Work Plan. The Integrated Work Plan shall provide detailed information, in a Microsoft Project (Version 2003 or later) document as described in RFP Section 7.3.5, including but not limited to tasks, Deliverables, Schedule, task dependencies, identification of resource requirements, and Payment Schedule. The Integrated Work Plan shall be inclusive of the mutual expectations and work to be performed by DSHS and Contractor in order to complete the Project successfully. Contractor shall deliver a Contractor Work Plan, which includes its proposed changes to the Contractor Work Plan in the Response, to the DSHS Project Manager for DSHS's review not later than 30 days after the Effective Date. Such Contractor Work Plan shall be a Deliverable. In the event of failure of DSHS to give its Acceptance of the changed Contractor Work Plan within 45 days of the Effective Date, DSHS may immediately terminate this Agreement.

7.2.2 The Schedule shall not change as a result of time required by Contractor to correct Deficiencies, unless otherwise agreed beforehand in writing by DSHS. However, the Schedule may, in DSHS's discretion, be extended on a day-to-day basis to the extent that DSHS's review of a Deliverable and review of corrections of Deficiencies in accordance with the Acceptance process and Acceptance Test Plan is longer than described in the Schedule.

7.2.3 Contractor shall provide proposed updates to the Integrated Work Plan regularly (no less than bi-weekly) as described in RFP Section 7.3.5 and as otherwise necessary throughout the Project to accurately reflect the status of activities, tasks, events, Services, and projected Schedule for such activities, tasks, events and Services. Any such update changes shall be deemed to be Deliverables and must be agreed upon by DSHS prior to their final incorporation into the Integrated Work Plan. However, unless otherwise specifically agreed to in writing, DSHS's agreement on a change to the Integrated Work Plan shall not relieve Contractor of liability for liquidated damages and other damages arising from

such failures to perform its obligations as required herein. Contractor shall maintain updated copies of its internal work plans in a common server drive accessible by DSHS.

7.3 Acceptance Process for Deliverables.

7.3.1 Upon delivery of a Deliverable and receipt of Confirmation from Contractor that the Deliverable meets its Specifications, DSHS will, with Contractor's assistance and in accordance with the Integrated Work Plan, review or perform Acceptance Tests on the Deliverable, as applicable, to determine whether the Deliverable conforms to its Acceptance Criteria. DSHS will provide Acceptance for a Deliverable if it has no Deficiencies. However, if a Deficiency is found, DSHS will notify Contractor in an email or other document of Deficiencies used as the grounds for DSHS's decision not to give Acceptance. Contractor shall correct Deficiencies and resubmit a corrected Deliverable to DSHS which will review or perform Acceptance Tests on the Deliverable to verify whether the Deliverable lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and DSHS's review of Deliverables shall be in accordance with the timeframes therefor set in the Integrated Work Plan. If time periods for correcting Deficiencies by Contractor and reviewing and retesting corrected Deliverables are not in the Integrated Work Plan, each such time period shall be ten business days.

7.3.2 If Contractor is unable to correct all Deficiencies within the number of days indicated in the Integrated Work Plan following the Deliverable's scheduled Acceptance, or if no such date is in the Integrated Work Plan, within 60 days from such scheduled Acceptance, DSHS may, at its option: (a) continue reviewing or performing Acceptance Tests on the Deliverable and require Contractor to continue until Deficiencies are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; (c) set-off from the Purchase Price to the extent DSHS determines the Deficiencies for the Deliverable have not been corrected and provide Acceptance for the applicable Deliverable; or (d) after completion of the process set forth in this Section 7.3 and providing Notice of default to Contractor, terminate this Agreement in whole or in part as described in Section 21.2.

7.4 Source Code.

7.4.1 Contractor shall provide DSHS with a copy of the Custom Software Source Code and updated associated technical documentation for the Custom Software: (i) upon Acceptance of the System; (ii) when Contractor delivers an Enhancement to the System during the term of this Agreement; (iii) as described in the Integrated Work Plan; and (iv) at other times during the Project and ASP Services as requested by DSHS. Contractor shall provide such Source Code and Documentation at no additional cost on magnetic media in a format acceptable to DSHS.

7.4.2 Contractor shall also use the terms of Exhibit D to allow DSHS to obtain access to other Software Source Code under conditions described in Exhibit D. At its option and expense, DSHS may request that the completeness and accuracy of any such Source Code and/or associated technical documentation be verified. Such verification will be

conducted by the escrow agent or, upon at least ten days' prior notice to Contractor, a representative of DSHS, after full disclosure to Contractor of information reasonably requested by Contractor about such representative. Unless otherwise agreed in writing by Contractor and DSHS, verification will be performed on-site at Contractor's premises, utilizing Contractor's Equipment and software, at a time reasonably acceptable to Contractor. Contractor shall make technical and support personnel available as reasonably necessary for the verification at no additional cost. In the event the Source Code and/or associated technical Documentation in escrow is not accurate or complete, Contractor shall promptly correct such inaccuracies or incomplete escrow, but in all cases within ten days.

7.5 Protection From Damage. Contractor shall continuously protect all Deliverables and backups therefor prior to their Acceptance and while in Contractor's possession or control from damage, destruction or loss resulting from or caused by the acts or omissions of Contractor in connection with the Services. Contractor shall ship all Deliverables purchased pursuant to this Agreement, FOB DSHS's destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. During the period Deliverables are in transit and in possession of Contractor, its carriers or DSHS prior to their Acceptance, Contractor and its insurers, if any, shall relieve DSHS of responsibility for all risks of loss or damage thereto, unless such loss or damage are caused by the negligence or misconduct of DSHS. After DSHS provides Acceptance for a Deliverable, the risk of loss or damage shall be borne by DSHS, except loss or damage attributable to Contractor's acts or omissions.

7.6 Interpretation of Deliverables. In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Agreement, including without limitation, a Deliverable that has already received Acceptance, the RFP and the Response, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in accordance with DSHS's reasonable judgment and in favor of the latest DSHS approved Deliverable, except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No requirements can be omitted from the Specifications and DEDs without the written consent of the DSHS Project Director.

7.7 Representation. By submitting a Deliverable, Contractor represents that it has performed the associated tasks in a manner that will, in concert with its other obligations, meet the Specifications and objectives stated or referred to in this Agreement. By giving Acceptance for a Deliverable, DSHS represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

7.8 Knowledge Transfer. While constructing and developing Deliverables, including without limitation for DDI and ASP Services of Software, Contractor shall demonstrate and provide information to staff designated by DSHS about the functions and operations of all such Software in accordance with the Specifications and the Integrated Work Plan.

8. Licenses to Software and Documentation.

8.1 Application Software and Documentation Licenses

8.1.1 Grants. Contractor hereby grants DSHS a nonexclusive license to use and access the Contractor Technology, System and ASP Services, in whole or in part, for supporting the internal operations of DSHS and Processing the Data. If DSHS receives the Source Code for the Software pursuant to Section 7.4, in whole or in part, Contractor grants to DSHS a nonexclusive, perpetual, nonterminable, irrevocable license to use, demonstrate, modify, prepare derivative works based on, and reproduce the Application Software, which Contractor provides to DSHS in Source Code format, for DSHS's internal purposes and for Processing data for other State agencies and other State tax-supported entities.

8.1.2 License Terms. The licenses hereunder are granted as of the date of first access to or delivery of the Contractor Technology, System, and ASP Services and continue until DSHS returns or ceases to use and access the Contractor Technology, System and ASP Services.

8.1.3 Title. Contractor and its suppliers hold all right, title and interest in the Contractor Technology and other Application Software.

8.1.4 Documentation. Contractor shall provide two sets of Documentation for use in electronic format compatible with Microsoft Corporation's then-generally available Office products and written format in accordance with the terms of this Agreement. Upgrades and revisions to this Documentation shall be provided while Contractor is providing Services therefor. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing DSHS access to its web-based Documentation information. Contractor may also provide such information on CD-ROM. Contractor grants DSHS a nonexclusive, perpetual, nonterminable, irrevocable right to use, make derivative works based upon, modify, and reproduce the Documentation furnished pursuant to this Section at no additional charge.

8.1.5 Copies. DSHS will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Contractor Technology and other Application Software and its Documentation.

8.1.6 Restrictions. Except as otherwise permitted in this Agreement, DSHS agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Application Software.

8.1.7 Third-Party Software Licenses. Prior to utilizing any Third-Party Software product that may be included as part of a Software Deliverable to DSHS and that will require DSHS to execute a license agreement from the licensor, Contractor shall provide to DSHS copies of any applicable license agreement from the licensor of the

Third-Party Software to allow DSHS to pre-approve such license agreement. Contractor shall assign to DSHS applicable licenses for the Third-Party Software upon Acceptance of the System.

8.1.8 Versions. Unless otherwise mutually agreed to in writing, Contractor shall, as long as Contractor hosts the Software, maintain any and all Third-Party Software products at their most current version or no more than one version back from the most current version and at no additional charge. However, Contractor shall not maintain any Third-Party Software versions, including one version back, if any such version would prevent DSHS from using any functions, in whole or in part, or would cause Deficiencies in the System. If implementation of an upgrade to a Third-Party Software product requires personnel in addition to the Staff proposed in the Response for the ASP Services, DSHS and Contractor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, any additional Charges to be paid by DSHS for such upgrade. Any additional costs that are charged by a Third-Party Software manufacturer for an upgrade to a Third-Party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by Contractor.

8.2 State and Federal Governments. In accordance with 45 C.F.R. 95.617 and 45 C.F.R. 92.34, all appropriate State and federal agencies, including but not limited to CMS, will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for federal government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal financial participation under 45 CFR subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with Federal Financial Participation under the Agreement; (iii) the copyright in any work developed under this Agreement; and (iv) any rights of copyright to which Contractor purchases ownership under this Agreement.

9. DSHS Ownership. DSHS will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under 45 CFR subpart F. In addition, DSHS shall own all right, title and interest in and to its Confidential Information, DSHS's intellectual property, the DSHS Equipment and the other Deliverables (except as provided below), including without limitation the Custom Software (except for changes or modifications to Contractor Software), the Specifications, and the Documentation. Contractor shall take all actions necessary and transfer ownership of such Deliverables to DSHS upon their Acceptance. As between the parties, all products of the Services, including without limitation the Software (except for the Application Software, which for the purposes of this Section of the Agreement shall not be owned by DSHS), and Data, shall be deemed works made for hire of DSHS for all purposes of copyright law, and copyright shall belong solely to DSHS. In the event that any such work is adjudged to be not a work made for hire, Contractor agrees to assign, and hereby assigns, all copyright in such work to DSHS. Contractor shall, at the expense of DSHS, assist DSHS or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to

DSHS right, title and interest in and to such works. Contractor also agrees to waive and not assert any moral rights it may have in any such works.

10. Implementation.

10.1 Implementation. Contractor shall complete the Implementation of the System according to Sections 1, 2.1.2.9, 1.4.7, and 7.6.8 of the RFP and Response, the Integrated Work Plan and this Agreement.

10.2 Conversion. Contractor shall participate in and perform Services for Conversion as described in Sections 2.1.2.3, 2.1.2.6, 2.7.2.7, 2.1.2.9, 4.6.1, and 7.6.3 of the RFP and Response and with the Integrated Work Plan.

10.3 Training. Contractor shall provide User and technical Training Services in accordance with Sections 2.1.2.8, 4.6.1, and 7.6.7 of the RFP and Response and in accordance with the Integrated Work Plan.

11. Warranties.

11.1 Deliverables. Contractor represents and warrants that each Deliverable shall meet and conform to its applicable Specifications as provided herein following its Acceptance and during the Term. Contractor also represents and warrants that the System and ASP Services, in whole and in part, shall operate in accordance with the Detailed System Design Deliverables, the Performance Standards, the other Acceptance Criteria in applicable DEDs, the Documentation, and the Agreement following their Acceptance and during the Term.

11.2 Services.

11.2.1 Contractor represents and warrants that:

11.2.1.1 It shall perform all Services required pursuant to this Agreement in a professional manner, with high quality;

11.2.1.2 It shall give highest priority to the performance of the Services; and

11.2.1.3 Time shall be of the essence in connection with performance of the Services for the Critical Events.

11.2.2 Contractor shall immediately re-perform Services which are not in compliance with such representations and warranties at no cost to DSHS.

11.3 Date/Time Compliance Warranty. Contractor warrants that the System and all Data-related output or results produced by the System: (i) shall not have a life expectancy limited by date or time format; (ii) shall correctly record, store, process, and present calendar dates; (iii) shall lose no functionality, data integrity, or performance with respect to any date; and (iv) shall be interoperable with other software used by DSHS that may deliver date records from the Software, or interact with date records of the Software.

11.4 No Self-Help Code or Unauthorized Code Warranty.

11.4.1 Contractor warrants to DSHS that the System, ASP Services and Contractor Technology provided to DSHS under this Agreement contain or shall contain no Self-Help Code or any Unauthorized Code. Contractor further warrants that Contractor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict DSHS's use of or access to the Software, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software provided to DSHS under this Agreement.

11.4.2 Contractor will defend DSHS against any claim, and indemnify and hold harmless DSHS against any loss or expense arising out of any breach of this warranty. DSHS agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

11.5 Physical Media Warranty. Contractor warrants that each copy of the Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy. Contractor shall replace, at Contractor's expense including shipping and handling costs, any Software provided by Contractor that does not comply with this warranty.

11.6 Intellectual Property Warranty. Contractor hereby warrants and represents to DSHS that Contractor is the owner of the Contractor Technology, ASP Services and System licensed hereunder or otherwise has the right to grant to DSHS the licensed rights to the Contractor Technology, ASP Services, and System provided by Contractor through this Agreement without violating any rights of any third party worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology, System or ASP Services infringe or misappropriate any patents, copyrights, or trade secrets of any third party, and (ii) the Contractor Technology, System and ASP Services do not infringe upon or misappropriate any patents, copyrights, trade secrets or any other intellectual property rights of any third party. The State shall receive prompt Notice of each notice or claim of copyright infringement or infringement or misappropriation of other intellectual property right worldwide received by Contractor with respect to the Contractor Technology, ASP Services, or System delivered under this Agreement.

11.7 Compliance With Laws. Contractor warrants that the System and ASP Services shall comply with all applicable federal, State and local laws, regulations, codes and ordinances. Contractor warrants that, throughout the Term of the Agreement, the System and ASP Services shall comply with changes to and new applicable federal, State and local laws, regulations, codes and ordinances.

11.8 Registration. Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services, including without limitation the provisions of RCW 19.02.

11.9 Written Commitments. Any written commitment by Contractor within the scope of this Agreement shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute a material breach and shall render Contractor liable for damages under the terms of this Agreement. For purposes of this section, a commitment by Contractor includes: (i) Purchase Prices, Charges, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to DSHS.

11.10 Authorization. Contractor represents and warrants that:

11.10.1 Contractor is a [corporation duly incorporated,] validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

11.10.2 The execution, delivery and performance of this Agreement has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Agreement and perform its obligations under this Agreement;

11.10.3 Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement;

11.10.4 Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Services. Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense; and

11.10.5 Contractor has the full power and authority to grant to DSHS the rights described in this Agreement without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor. Contractor further represents and warrants that the person executing this Agreement for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Agreement, and that all requirements of Contractor have been fulfilled to provide such actual authority.

11.11 Ability To Perform. Contractor represents and warrants that:

11.11.1 Contractor has the financial stability to carry out at least six months of Services, including ASP Services during any period of this Agreement without reimbursement for the Services or expenses;

11.11.2 Contractor has the financial resources to fund the capital expenditures required under the Agreement without advances by DSHS or assignment of any payments by DSHS to a financing source;

11.11.3 Each Subcontractor providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement; and

11.11.4 Contractor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by release, stage, segment, or cost objective in order to support Change Order accounting.

11.12 DISCLAIMERS. WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES AND DELIVERABLES AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

12. Warranty Services and ASP Services.

12.1 General Responsibilities. During the Warranty Periods and while Contractor is providing ASP Services, Contractor shall provide Services as described below in this Section as the Warranty Services at no additional cost to correct Deficiencies in the System and ASP Services, repair and maintain the System and ASP Services in accordance with the Specifications. Contractor shall perform these Warranty Services after the Warranty Periods and during ASP Services at Charges described in Exhibit A. Contractor's Warranty Service responsibilities shall include but not be limited to the following while assisting DSHS in operating and maintaining the System and ASP Services:

12.1.1 Promptly repair or replace the System and ASP Services, or any portion thereof, that has Deficiencies;

12.1.2 Maintain the System and ASP Services in accordance with the Specifications and terms of this Agreement;

12.1.3 Upon request by DSHS, re-perform any Service that fails to meet the requirements of this Agreement at no additional cost;

12.1.4 Provide these Warranty Services 24 hours a day, Monday through Sunday;

12.1.5 Propose revisions to the Software as necessary to meet DSHS's Processing needs; and

12.1.6 Coordinate with DSHS all tasks related to correcting problems and Deficiencies connected with the Software or the Equipment.

12.2 Inquiry Assistance. Contractor shall respond to inquiries from DSHS as described in Exhibit C and with the following, as applicable:

12.2.1 Responses to questions relating to the Software, including without limitation isolating problems to the Software, Data or Equipment;

12.2.2 The development, on a best efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;

12.2.3 Corrections and repairs of errors, problems or Deficiencies with the Software, to the extent technically feasible; and

12.2.4 Clarification of Documentation.

12.3 Database. Contractor shall maintain and make available online to DSHS a database of all Change Requests, Deficiencies, other problems reported by DSHS under Section 12.2 or known to Contractor in the Software. The database shall include, as a minimum, the following:

12.3.1 Date and time Contractor was notified or an inquiry is made;

12.3.2 Date and time of inquiry response;

12.3.3 Time spent for resolution of Deficiencies;

12.3.4 Description of Deficiency;

12.3.5 Description of severity level of Deficiency, e.g., emergency;

12.3.6 Description of Deficiency resolution; and

12.3.7 Date of resolution.

12.4 Enhancements.

12.4.1 Contractor shall provide DSHS with all Enhancements and associated Documentation that are provided as general releases to the Software, in whole or in part, as part of the ASP Services. Such Documentation shall be adequate to inform DSHS of the problems resolved including any significant differences resulting from the release which are known by Contractor. Contractor warrants that each such Enhancement general release shall be tested and perform according to the Specifications. Contractor agrees to correct corrupted Data that may result from any System Deficiency introduced by the Enhancement at no cost to DSHS.

12.4.2 In addition, Contractor shall produce such Enhancements which DSHS requests or which Contractor requests and DSHS approves in a commercially

reasonable time and form at an additional charge in accordance with the Change Order process described herein. Enhancements to correct any Deficiency shall be provided to DSHS at no additional cost and without the need for a Change Order.

12.5 Resident Staff. Contractor Staff shall be resident at DSHS's Olympia, Washington facilities during the first four months after Acceptance of the System and other Staff shall be available throughout the Warranty Period and thereafter as described in this Agreement to provide these Services.

12.6 Performance Standard Measurement. Contractor shall maintain the System and ASP Services, in whole and in part, to meet the Performance Standards. Contractor will conduct tests for measuring and certifying the achievement of the Performance Standards. Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor's performance of the ASP Services and System against the applicable Performance Standards. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Performance Standards, and will be subject to audit by DSHS. Contractor will provide DSHS with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

12.7 Continuous Improvement. Contractor must on an ongoing basis, as part of its total quality management process, identify, report to DSHS, and implement ways to improve performance of the Services and identify and apply techniques and tools from other Contractor installations that would benefit DSHS either operationally or financially.

13. Dispute Resolution.

13.1 Good Faith Efforts. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties. If the dispute cannot be resolved within 30 days of initiating such negotiations, either party may pursue its available legal and equitable remedies.

13.2 Continued Performance. Contractor and DSHS agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement.

14. Changes.

14.1 Changing Government Programs.

14.1.1 The parties acknowledge that the government programs supported by this Agreement will be subject to continuous change during the term of this Agreement. Except as provided in this Section 14, Contractor has provided for or will provide for adequate resources, at no additional cost to DSHS, to reasonably accommodate such changes, subject to the Change Order process of this Section 14.

14.1.2 The parties also acknowledge that Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable federal and/or State laws, regulations, policies, or guidelines that affect the performance of the Services and System.

14.2 Identifying Changes. In keeping with DSHS's reliance on Contractor's knowledge, experience and expertise, Contractor will be responsible for identifying changes in applicable federal or State legislative enactments and regulations and the impact of such changes on the performance of the Services or Deliverables or DSHS's use of the Services or Deliverables. Contractor must timely notify DSHS of such changes and must work with DSHS to identify the impact of such changes on how DSHS uses the Services or Deliverables.

14.3 Noncompliance. Contractor will be responsible for any fines, penalties, or disallowances imposed on the State or Contractor arising from any noncompliance with the laws, regulations, policies, guidelines and Collective Bargaining Agreements that affect the Services or Deliverables that are to be provided or that have been provided by Contractor, its Subcontractors or agents.

14.4 Notice from DSHS. In the ordinary course of business, if DSHS becomes aware of any material changes in applicable law, regulation, policy, or guidelines affecting the Agreement, DSHS will promptly notify Contractor of the changes.

14.5 Issuance of Change Requests. DSHS may, at any time by a written Change Request, request changes within the scope of the Agreement. Such changes may include, without limitation, revisions to Deliverables or Services.

14.6 Contractor Response to Standard Change Requests. Subject to Section 14.7, Contractor shall respond in writing to a Change Request within 15 days of receipt, advising DSHS of any cost and Schedule impacts. When there is a cost impact, *i.e.*, increase or decrease in Charges or Purchase Prices, Contractor shall advise DSHS in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Contractor and DSHS personnel needed to effect this change.

14.7 Contractor Response to Change Request During Union Negotiations. Every two years, the State enters into CBAs with various unions that represent the providers who will be paid through the ASP Services. During these CBA negotiations and follow-on arbitration hearings, DSHS shall submit Change Requests to Contractor for various changes to the CBA being negotiated between the State and such unions that may affect the System, and Contractor shall promptly provide cost and schedule estimates and assumptions in response to Change Requests from DSHS in the timeframe required by DSHS in the Change Request, which the parties acknowledge can range from one day to two weeks or more. Once CBAs are ratified and the final changes to the CBA that affect the System are known by DSHS, DSHS shall re-submit the Change Requests to Contractor under Section 14.5 to obtain a formal response with complete and accurate amounts from Contractor as described in Section 14.6.

14.8 Agreement on Change Order. The Contractor Project Manager and the DSHS Project Director (or designees) shall negotiate in good faith and in a timely manner as to

the price and the impact on the Schedule of any Change Request. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Agreement shall be modified accordingly. The parties will execute a formal Agreement amendment for any Change Order that increases or decreases the Maximum Amount. All Change Orders must be executed by the DSHS Project Director. Contractor will incorporate all Change Orders affecting the Services and Deliverables into applicable System Documentation. In no event shall the Charges or Purchase Prices be increased nor shall the Schedule be extended in a Change Order to correct errors or omissions in the System or ASP Services.

14.9 Disagreement. If federal or state laws, rules, regulations, policies, guidelines, or CBAs are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Agreement, the parties will promptly negotiate in good faith appropriate modifications or alterations to the Agreement and any appropriate Change Orders for amounts over the limitations specified in Exhibit A. If DSHS submits to Contractor a Change Request to comply with such laws, rules, regulations, policies, guidelines or CBAs and if the parties are unable to reach an agreement in writing within 15 days of Contractor's response to such a Change Request, the DSHS Project Director may make a determination of the revised price and Schedule, and Contractor shall proceed with the work according to such price and Schedule which shall be included in the resulting Change Order, subject to Contractor's right to appeal the DSHS Project Director's determination of the price and/or Schedule to the dispute resolution process under Section 13. Nothing in this Section 14.9 shall in any manner excuse Contractor from proceeding diligently with the Agreement as changed by the Change Order.

14.10 Termination. If Contractor fails or refuses to perform its Services pursuant to a Change Order, Contractor shall be in material breach of this Agreement, and DSHS shall have the right to terminate the Agreement for such a breach.

14.11 Contractor Submission of Change Request. Contractor may also submit a Change Request to DSHS to propose changes that should be made within the scope of the Agreement. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Staff hours by level of Contractor and DSHS personnel needed to effect this change. DSHS will attempt to respond to such Change Requests from Contractor within 20 days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Agreement shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the DSHS Project Manager will be deemed to have rejected the requested Change Request.

15. Letter of Credit. The Letter of Credit shall secure the performance of Contractor, including without limitation performance of the Services in accordance with the Integrated Work Plan and providing Deliverables in accordance with the Specifications, and shall secure any damages, cost or expenses resulting from Contractor's breach hereunder or liability caused by Contractor. In the event of a breach, the Letter of Credit shall become payable to DSHS for any outstanding damage assessments made by DSHS against Contractor. An amount up to the full amounts of the Letter of Credit may also be applied to Contractor's

liability for any administrative costs and/or excess costs incurred by DSHS in obtaining similar Software, Deliverables, other products and Services to replace those terminated as a result of Contractor's breach. DSHS may seek other remedies in addition to the Letter of Credit.

16. Additional Rights and Remedies.

16.1 Liquidated Damages.

16.1.1 The parties agree that any delay or failure by Contractor to timely perform its obligations by the dates in the Integrated Work Plan and in accordance with the Performance Standards will interfere with the proper and timely Implementation of the System and Services, to the loss and damage of DSHS. Further, DSHS will incur major costs to maintain the functions that would have otherwise been performed by Contractor. The parties understand and agree that the following Sections describe the liquidated damages Contractor shall pay to DSHS as a result of nonperformance hereunder by Contractor.

16.1.2 The assessment of liquidated damages shall not constitute a waiver or release of any other remedy DSHS may have under this Agreement for Contractor's breach of this Agreement, including without limitation, DSHS's right to terminate this Agreement, and DSHS shall be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Agreement. However, DSHS will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

16.1.3 Amounts due DSHS as liquidated damages may be deducted by DSHS from any money payable to Contractor under this Agreement, or DSHS may bill Contractor as a separate item therefor and Contractor shall promptly make payments on such bills.

16.2 Withholding Payments. If Contractor fails to perform its obligations under the Agreement, DSHS shall have the right to withhold any and all payments due hereunder. DSHS may withhold any and all such payments due hereunder to Contractor, as aforesaid, without penalty or work stoppage by Contractor, until such failure to perform is cured.

16.3 Reductions in Payments Due. Amounts due DSHS by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by DSHS from any money payable to Contractor pursuant to this Agreement.

16.4 Performance Standards. If the System fails to meet all applicable Performance Standards during the Acceptance Test process and while Contractor is providing ASP Services, Contractor shall modify, reconfigure, upgrade or replace Software and Equipment at no additional cost to DSHS in order to provide a System and ASP Services that comply with such Performance Standards.

16.5 Suspension for Convenience. DSHS shall have the right at any time to order the Services fully or partially stopped for its own convenience for up to 15 consecutive days. Contractor will receive Notice of the reasons for such an order. The Schedule shall be delayed on a day-for-day basis to the extent DSHS has issued a stop work order to Contractor

and such stop work order is causing delays in completing Services in accordance with the Schedule. Contractor shall have the right to submit claims in accordance with the terms of Section 22.5, as a result of stop work orders issued under this Section.

16.6 Right to Inspect. Contractor shall make the Deliverables and Services being provided by Contractor available for inspection and review at any reasonable time by representatives of DSHS.

16.7 Cover. If, in the reasonable judgment of DSHS, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within ten days of receipt of Notice from DSHS, and the default is capable of being cured by DSHS or by another resource without unduly interfering with continued performance by Contractor, DSHS may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall be liable, subject to Section 20.3, for all damages, including, but not limited to: (i) the cost difference between the original Agreement price for the Software and/or Services and the replacement costs of such Software and/or Services acquired from another vendor; and (ii) if applicable, all administrative costs directly related to the replacement of such Services and Software, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.. In addition, Contractor must cooperate with these resources in allowing access to the Software.

17. Insurance.

17.1 Liability and Auto Insurance. Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Contractor shall include DSHS, its boards, agencies, contractors, offices, employees, agents and volunteers as an additional insured party in Contractor's insurance policy obtained hereunder. If Contractor fails to buy and maintain the insurance coverage described in this Section 17, DSHS may terminate this Agreement under Section 21.1 (Termination for Contractor's Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

17.1.1 Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

17.1.2 Business Automobile Liability (owned, hired, or nonowned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

17.1.3 Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1

million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

17.1.4 Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

17.1.5 Professional Liability Errors and Omissions, with coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and

17.1.6 Crime Coverage with a deductible not to exceed \$1 million and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

17.2 Worker's Compensation Coverage. Prior to providing Services under this Agreement, Contractor shall, in full compliance with State law, provide or purchase worker's compensation coverage for its employees and Employer's Liability in the minimum amount of \$1 million during the course of this Agreement. DSHS will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, DSHS may deduct the amount of premiums owing from the amounts payable to Contractor under this Agreement and transmit the same to the responsible State agency.

17.3 Subcontractors. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

17.4 Premiums. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for DSHS pursuant to this Section shall expressly provide therein that DSHS be named as additional insured, and that it shall not be revoked by the insurer until 30 days Notice of intended revocation thereof shall have first been given to DSHS by such insurer.

17.5 Cancellation. Contractor's insurance policies shall not be canceled or nonrenewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until five business days' written Notice has been given to DSHS, attention DSHS Project Director, and Contractor has replacement insurance polic(ies) in place that satisfy the requirements set forth in this Section 17. Contractor's insurance policies shall not be reduced in scope without DSHS's prior written consent.

17.6 Insurance Documents. Contractor shall furnish to DSHS copies of certificates of all required insurance within 30 days of the Effective Date, and copies of renewal certificates of all required insurance within 30 days after the renewal date. These certificates of

insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by DSHS for material breach under Section 21.1.

17.7 Increased Coverage. DSHS is to be notified by Contractor immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements.

17.8 Subrogation. Contractor agrees to waive all rights of subrogation against DSHS, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by Contractor under this Agreement.

17.9 Cross-Liability. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

17.10 Extended Coverage. For Professional Liability Errors and Omissions coverage under Section 17.1.5 and Crime Coverage under Section 17.1.6, Contractor shall continue such coverage for three years beyond the expiration or termination of this Agreement, naming DSHS as an additional insured and providing DSHS with certificates of insurance on an annual basis.

18. Confidential Information and Proprietary Information.

18.1 Protection Obligations.

18.1.1 Access and Protection. During the term of the Agreement, Contractor and DSHS will have access to and become acquainted with each party's Confidential Information and Proprietary Information. Except for disclosure pursuant to Section 18.1.2, DSHS and Contractor, and each of their officers, employees and agents, shall, subject to State laws and regulations and in accordance with this Section 18.1.1, maintain (a) all Confidential Information of the other party in strict confidence, and (b) all Proprietary Information at least to the same extent as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information or Proprietary Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 18.1.1, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal and State law and regulation and this Section 18.1.1, the other party's Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Except for disclosures pursuant to Section 18.1.2 below, each party agrees that prior to disclosing any Proprietary Information or Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 19.1.1 with respect to the

Proprietary Information and Confidential Information. In addition to the requirements expressly stated in this Section 18.1.1, Contractor and its Subcontractors will comply with any policy, rule, or reasonable requirement of DSHS that relates to the safeguarding or disclosure of information relating to Medicaid applicants and recipients, Contractor's operations, or the Services performed by Contractor under this Agreement, including without limitation the terms of Exhibit F which is incorporated herein by this reference.

18.1.2 Public Record. Notwithstanding the above, DSHS is subject to Chapter 42.56 RCW, and this Agreement shall be a public record as defined in Chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information or Confidential Information must be clearly identified as such by Contractor. To the extent consistent with Chapter 42.56 RCW, DSHS will maintain the confidentiality of all such information marked Proprietary Information or Confidential Information. If a request is made to view Contractor's Proprietary Information or Confidential Information, DSHS will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DSHS will release the identified requested information on the date specified.

18.1.3 Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of DSHS (which security standards, practices, and procedures of DSHS shall have been provided to Contractor in writing and are included in Exhibit H) with respect to information and materials which come into each party's possession and to which such party gains access under this Agreement. Such information and materials include without limitation all Proprietary Information and Confidential Information.

18.2 Audit. DSHS reserves the right to monitor, audit or investigate Contractor's use of DSHS Confidential Information and Proprietary Information collected, used, or acquired by Contractor under this Agreement.

18.3 Return. Subject to record retention laws and to DSHS's rights under Section 8.1, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information and Proprietary Information, including copies thereof.

18.4 Injunctive Relief.

18.4.1 Contractor shall immediately report to DSHS any and all unauthorized disclosures or uses of DSHS's Confidential Information or Proprietary Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of DSHS's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to DSHS. If Contractor should publish or disclose such Confidential Information or Proprietary Information to others without authorization, DSHS shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

18.4.2 DSHS will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information or Proprietary Information of which DSHS is aware or has knowledge. DSHS acknowledges that any publication or disclosure of Contractor's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Contractor. If DSHS should publish or disclose such Confidential Information or Proprietary Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

18.5 Nondisclosure of Other DSHS Information. The use or disclosure by Contractor of any DSHS information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of DSHS.

18.6 Exceptions. The following information shall not be considered Confidential Information or Proprietary Information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

18.7 Survival. The provisions of Section 18 shall remain in effect following the termination or expiration of this Agreement.

19. Indemnifications.

19.1 Intellectual Property.

19.1.1 Contractor shall, at its expense, defend, indemnify, and hold harmless DSHS and its employees, officers, directors, contractors and agents from and against any claim or action against DSHS which is based on a claim that any Deliverable or Service any part thereof under this Agreement infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. DSHS shall promptly give Contractor notice of any such claim. DSHS agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.

19.1.2 In case the Deliverables or Services, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of DSHS's rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for DSHS the right to continue using the Deliverables

or Services; (ii) modify the Deliverables or Services to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables upon receipt of notice from DSHS and refund the Purchase Price of each Deliverable, as applicable. Notwithstanding anything to the contrary herein, the refunds that are provided under this Section are not included under the amounts of the direct damages limits set forth in Section 20.3.

19.1.3 However, Contractor shall not be liable to the extent claims of misappropriation of infringement arise from Contractor's compliance with any designs, Specifications or written instructions of DSHS and Contractor could not have avoided such claims through alternative products, or from modifications made by any party other than Contractor.

19.2 General. Contractor shall, at its expense, indemnify, defend, and hold harmless DSHS, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any: (i) claim or action, including without limitation for property damage, bodily injury or death, which is caused by or arises from the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors; (ii) a breach of its obligations in Section 18; or (iii) sanctions, penalties, disallowances or fines. DSHS shall promptly give Contractor notice of such claim or action. DSHS agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.

19.3 Waiver of Statutory Immunity. Contractor intentionally accepts the terms of this Section and waives any and all statutory immunity provided by the Washington State Industrial Insurance Act, RCW Title 51, with regard to all rights of the indemnities stated herein. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED, HAS BEEN EXPRESSLY AND SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO DSHS.

20. Damages Disclaimers and Limitations.

20.1 DSHS's Disclaimer of Damages. DSHS SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES.

20.2 DSHS's Limitation of Liability. IN NO EVENT SHALL DSHS'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT,

NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

20.3 Contractor's Limitation of Liability. Contractor will not be liable to DSHS to the extent of any loss, damage, or liabilities:

20.3.1 Caused by the failure of DSHS, another State agency, or a DSHS contractor to perform in connection with this Agreement and such nonperformance prevented Contractor from performing in accordance with this Agreement; or

20.3.2 Resulting from Contractor acting prudently in accordance with instructions given by authorized representatives of DSHS or other authorized State agencies.

21. Termination.

21.1 Termination for Contractor's Material Breach. If Contractor materially breaches this Agreement, then DSHS shall give Contractor written Notice of such breach. Contractor will correct the breach within 30 days of receipt of such Notice. If the breach is not corrected, this Agreement may be terminated immediately, in whole or in part, by Notice from DSHS to Contractor. The option to terminate shall be at the sole discretion of DSHS.

21.2 Termination for Rejection of Deliverables. If Contractor is unable to correct Deficiencies in a Deliverable, as described in Section 7.3, DSHS shall have the right to immediately terminate this Agreement, in whole or in part, without penalty or liability to DSHS, with such a termination being deemed a termination due to the default of Contractor hereunder, and return the Deliverable to Contractor. If DSHS terminates this Agreement under this Section, Contractor shall, within 20 days thereafter, refund to DSHS all payments made to Contractor for the returned Deliverable and Services rendered therefor and all previous Deliverables which have received Acceptance and Services rendered therefor and which are returned with the rejected Deliverable.

21.3 Termination for Conflict of Interest. DSHS may terminate this Agreement under Section 21.1 (Termination for Contractor's Material Breach) by Notice to Contractor if DSHS determines, after due notice and examination, that Contractor (including but not limited to a Subcontractor) has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

21.4 Termination for DSHS's Nonpayment. If DSHS fails to pay Contractor undisputed, material Purchase Prices and Charges when due under the Agreement and fails to make such payments within 90 days of receipt of Notice from Contractor of the failure to make such payments, Contractor may, by giving Notice to DSHS, terminate this Agreement as of a date specified in the Notice of termination. Contractor shall not have the right to terminate the Agreement for DSHS's breach of the Agreement except as provided in this Section.

21.5 Termination Remedies.

21.5.1 In the event of termination of this Agreement by DSHS under Sections 21.1-21.3, DSHS shall, in addition to its other available remedies, have the right to procure the Services and Deliverables that are the subject of this Agreement on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Agreement price for the Software and/or Services and the replacement costs of such Software and/or Services acquired from another vendor; and (ii) if applicable, all administrative costs directly related to the replacement of this Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.

21.5.2 If it is determined for any reason the failure to perform is not within the Contractor's control, fault, or negligence, the termination by DSHS under Sections 22.1-22.3 may be deemed by DSHS to be a termination for convenience under Section 22.6.

21.6 Termination for Convenience.

21.6.1 In addition to its other rights to terminate, DSHS may terminate this Agreement, in whole or in part for DSHS's convenience, by at least ten days Notice to Contractor. Invocation of Section 21.7 (Termination for Withdrawal of Authority), or Section 21.8 (Termination for Nonallocation of Funds), shall be deemed a termination for convenience but will not require such ten days Notice.

21.6.2 During this ten-day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on DSHS from such winding down and cessation of Services. If this Agreement is so terminated, DSHS shall be liable only for payment in accordance with the terms of this Agreement for Services satisfactorily rendered prior to the effective date of termination.

21.6.3 In case of such termination for convenience, DSHS will pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by DSHS, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the hourly rate in Exhibit A, but such costs shall be no greater than the final Purchase Price for each Deliverable. In addition, DSHS agrees to compensate Contractor for reasonable and necessary costs that were incurred by Contractor on this Project, as a result of DSHS's termination for convenience, for undepreciated or unamortized equipment and software licenses, early termination of leases, and other reasonable and necessary Project-related expenses, subject to DSHS's reasonable judgment and the availability of State and Federal funds and receipt of supporting documentation from Contractor.

21.7 Termination for Withdrawal of Authority. In the event that the authority of DSHS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, DSHS may terminate this Agreement under Section 21.6 (Termination for Convenience), in whole or in part.

21.8 Termination for Nonallocation of Funds. If funds are not allocated to continue this Agreement in any future period, DSHS may terminate this Agreement under Section 21.4 (Termination for Convenience). DSHS will not be obligated to pay any further Charges for Services or Purchase Prices for such future period, but DSHS shall make payments for Services, Deliverables and Contractor's costs as provided in Section 21.6.3, subject to DSHS's availability of funding therefor. DSHS agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty shall accrue to DSHS in the event this Section shall be exercised.

21.9 Termination Procedure.

21.9.1 Upon termination of this Agreement, DSHS, in addition to any other rights provided in this Agreement, may require Contractor to deliver to DSHS any Property, including but not limited to Deliverables and Data, for such part of this Agreement as has been terminated.

21.9.2 After receipt of a Notice of termination, and except as otherwise directed by DSHS, Contractor shall:

21.9.2.1 Stop work under this Agreement on the date, and to the extent specified, in the Notice;

21.9.2.2 Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;

21.9.2.3 As soon as practicable, but in no event longer than 30 days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DSHS to the extent required, which approval or ratification shall be final for the purpose of this Section;

21.9.2.4 Complete performance of such part of this Agreement as shall not have been terminated by DSHS;

21.9.2.5 Take such action as may be necessary, or as the DSHS Project Director may direct, for the protection and preservation of the Property related to this Agreement which is in the possession of Contractor and in which DSHS has an interest;

21.9.2.6 Transfer title to DSHS and deliver in the manner, at the times, and to the extent directed by the Project Director, any Property which is required to be furnished to DSHS and which has been accepted or requested by DSHS; and

21.9.2.7 Provide written certification to DSHS that Contractor has surrendered to DSHS all such property.

21.9.3 Upon the expiration of this Agreement or the termination of this Agreement for any reason, DSHS's rights to the Contractor Technology will be as follows:

21.9.3.1 Unless otherwise agreed to between the parties as part of a turnover plan, Contractor will provide DSHS or its designee a license to use and reproduce for the State's internal purposes Contractor Technology at no additional cost and provide technical and professional support and maintenance at rates negotiated between the parties;

21.9.3.2 Contractor's rates for the technical and professional support and maintenance services addressed above will not exceed the lesser of:

- (i) Reasonable and customary rates for such Services;
or
- (ii) Contractor's rates for comparable services for other customers.

21.10 Transition Support. Contractor must provide for a reasonable, mutually agreed period of time after the expiration or termination of this Agreement, all reasonable transition assistance requested by DSHS, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to DSHS or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Agreement, except for those terms or conditions that do not reasonably apply to such transition assistance. DSHS shall pay the Contractor for any resources utilized in performing such transition assistance at the rates in Exhibit A. If DSHS terminates the Project or this Agreement under Sections 21.1 - 21.3, then DSHS will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages DSHS may have otherwise accrued as a result of such termination.

22. General Conditions.

22.1 Anti-Trust Violations. Contractor and DSHS recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by DSHS. Therefore, Contractor hereby assigns to DSHS any and all claims for such overcharges as to goods and services purchased in connection with this Agreement, except as to overcharges not passed on to DSHS resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Purchase Prices and Changes under this Agreement.

22.2 Assignment. Contractor may not assign or transfer this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of DSHS's Contracting Officer, provided that any permitted assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DSHS that may arise from any breach of the provisions of this

Agreement or warranties made herein including but not limited to, rights of setoff. DSHS may assign this Agreement to any public agency, commission, board, or the like, within the political boundaries of the State of Washington. Any attempted assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

22.3 Authority. Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

22.4 Binding Effect. Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, and representatives.

22.5 Claims. Contractor must submit claims against DSHS within the earlier of six months of the date upon which Contractor knew of the existence of the claim or six months from expiration or termination of the Agreement. No claims shall be allowed unless Notice of such claim has been given within the above-described time period. Such claims must be submitted to the DSHS Project Director or his or her designee by Contractor in the form and with the certification prescribed by the DSHS Project Director or his or her designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims against DSHS shall be, except as provided in Sections 18.4.2 and 21.4, Contractor's sole and exclusive remedy in the event that DSHS breaches this Agreement.

22.6 Compliance With Civil Rights Laws. During the performance of this Agreement, Contractor shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part by DSHS under Section 21.1 (Termination for Contractor's Material Breach), and Contractor may be declared ineligible for further contracts with DSHS.

22.7 Conflicts Between Documents; Order of Precedence. In the event that there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

22.7.1 Applicable federal and State laws, regulations and policies;

22.7.2 The terms and conditions in the body of this Agreement;

22.7.3 Change Orders;

22.7.4 Exhibit A (Deliverables, Payments and Key Staff);

22.7.5 Exhibit B (Software Configuration);

- 22.7.6** Exhibit C (Performance Standards and Liquidated Damages);
- 22.7.7** Exhibit D (Escrow Agreement);
- 22.7.8** The Specifications (except as otherwise listed below);
- 22.7.9** The Integrated Work Plan;
- 22.7.10** Other Deliverables;
- 22.7.11** Exhibit E (Letter of Credit);
- 22.7.12** Exhibit F (Business Associate Terms);
- 22.7.13** Exhibit H (DSHS Data Security Requirements);
- 22.7.14** The RFP;
- 22.7.15** Exhibit G (Revisions to the Response);
- 22.7.16** The Response;
- 22.7.17** The terms and conditions contained in DSHS's purchase documents, if used; and
- 22.7.18** All Contractor publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to DSHS and used to effect the sale of Deliverables and Services to DSHS.

22.8 Counterparts. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes.

22.9 Covenant Against Contingent Fees.

22.9.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.

22.9.2 In the event of breach of this Section by Contractor, DSHS shall have the right to either annul this Agreement without liability to DSHS, or, in DSHS's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

22.10 Cooperation of Parties. The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

22.11 Debarment and Suspension. Contractor certifies to DSHS that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or State government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

22.12 Entire Agreement; Acknowledgement of Understanding. DSHS and Contractor acknowledge that they have read the Agreement and the attached Exhibits which are incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, DSHS and Contractor agree that the Agreement and the Exhibits are the complete and exclusive statement of the Agreement between the parties relating to the subject matter of the Agreement and supersede all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Agreement, except as provided in Section 11.9.

22.13 Force Majeure. Neither Contractor nor DSHS shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

22.14 Governing Law. This Agreement shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. The exclusive jurisdiction and venue of any action hereunder shall be in the State courts of Thurston County, Washington. Contractor accepts the personal jurisdiction of such courts.

22.15 Headings. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22.16 Independent Status of Contractor. The parties hereto, in the performance of this Agreement, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

22.17 Legal and Regulatory Compliance. The Services and System shall comply with all applicable federal, State, and DSHS laws, regulations, codes, standards and ordinances during the term. It shall be the sole responsibility of Contractor to bring the Services and System into compliance at no additional cost to DSHS in the event that: (i) any Services performed or the System provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances; (ii) such violation is due to instructions or Specifications provided by DSHS; and (iii) such violation could have been avoided by

Contractor using a commercially reasonable alternative which complies with DSHS's instructions or Specifications. The parties will pursue the Change Order process in Section 14 to bring the Services and System into compliance in the event that: (i) any Services performed or the System provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances; (ii) such violation is due to instructions or Specifications provided by DSHS; and (iii) such violation could not have been avoided by Contractor using a commercially reasonably alternative which complies with DSHS's instructions or Specifications.

22.18 Licensing Standards. Contractor shall comply with all applicable DSHS, State, and federal licensing requirements and standards necessary in the performance of this Agreement.

22.19 Lobbying Activities. Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

22.20 Modifications and Amendments.

22.20.1 No modification, amendment, alteration, addition or waiver of any Section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of Contractor and DSHS.

22.20.2 Only the purchasing agent(s) authorized by the DSHS Project Director or authorized delegate by writing (with the delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of DSHS. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding until made in writing and signed by the purchasing agent(s) authorized by DSHS Project Director or authorized delegate in writing as aforesaid and Contractor, unless otherwise provided herein.

22.20.3 Contractor shall notify DSHS of the names of individuals who have authority to bind Contractor to modifications to the Agreement and of the limits of such authority at the time Contractor submits its Response and at such other times as required.

22.21 Nonwaiver. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by DSHS for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Contractor agrees that DSHS's pursuit or non-pursuit of a remedy under this Agreement for Contractor's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that DSHS may have at law or equity for any other occurrence of the same or similar breach, nor estop DSHS from pursuing such remedy.

22.22 Notices.

22.22.1 Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and e-mail addresses provided in this Section. For purposes of complying with any provision in this Agreement or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form. In the event the individual named by a party changes or no longer serves in the capacity provided, the party making such change will provide prompt written Notice of change.

22.22.2

To **Contractor** at:

Mailing Address

Telephone:

Fax:

E-mail:

To **DSHS** at:

Provider Compensation Subsystem Project
Department of Social and Health Services
State of Washington

PO Box _____

Olympia, WA 98504-5514

Telephone : (360) _____

Fax : (360) _____

E-mail : _____

22.22.3 Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

22.23 Publicity. The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor’s Services by DSHS and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the Project Director all advertising, sales promotion, and other publicity matters relating to this Agreement wherein DSHS’s name is mentioned or language used from which the connection of

DSHS's name therewith may, in DSHS's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of DSHS. Contractor shall not in any way contract on behalf of or in the name of DSHS. Nor shall Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of DSHS.

22.24 Remedies. Except for remedies designated specifically as exclusive, no remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

22.25 Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

22.26 Sovereign Immunity. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by DSHS or the State of Washington of any immunities from suit or from liability that DSHS or the State of Washington may have by operation of law.

22.27 Subcontractors.

22.27.1 Contractor may, with prior written permission from the DSHS Project Director, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. Subject to the other provisions of this Section 22.28, DSHS expressly consents to Contractor's use of the Subcontractors designated in its Response for the provision of the Services specified in the Response. Any such approval may be rescinded in DSHS's sole discretion.

22.27.2 Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to DSHS for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to DSHS upon request.

22.27.3 DSHS has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement. For purposes of this Agreement, Contractor agrees to indemnify, defend, and hold DSHS harmless from and against any and all claims, actions, losses, liabilities, damages,

costs and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of Contractor's Subcontractors, their agents, or employees.

22.27.4 For any Subcontractor, Contractor shall:

22.27.4.1 Be responsible for Subcontractor compliance with the Agreement and the subcontract terms and conditions; and

22.27.4.2 Ensure that the Subcontractor follows DSHS's reporting formats and procedures as specified by DSHS.

22.27.4.3 Include in the Subcontractor's subcontract and contracts for their Subcontractors' subcontractors at any tier substantially similar terms as are provided in Sections 3.9, 4.5 – 4.8, 8.1, 8.2, 9, 17, 18, 22.6, 22.9, 22.14, 22.19, and 22.26.

22.27.5 Upon expiration or termination of this Agreement for any reason, DSHS and/or the State will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with DSHS.

22.28 Subpoena. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Services provided pursuant to this Agreement is served upon Contractor or DSHS, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and DSHS further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for DSHS.

22.29 Survival. All Services performed and Deliverables delivered pursuant to the authority of this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive. In addition, the terms of Sections 4.7, 4.8, 8.1.1, 8.2, 9, 13, and 15-22, and Exhibits D - F shall survive the termination of this Agreement.

22.30 UCC Applicability. Except to the extent the sections of this Agreement are clearly inconsistent, this Agreement shall be governed by the Uniform Commercial Code as set forth in Title 62A RCW. To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or contradiction between this Agreement and the Uniform Commercial Code, the terms and conditions of this Agreement shall take precedence and shall prevail unless otherwise provided by law.

22.31 Waiver. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

The parties hereto, having read this Agreement in its entirety, including all attachments hereto do agree thereto in each and every particular. In witness thereof, the parties have set their hands hereunto as of the Effective Date.

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH
SERVICES

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:
ATTORNEY GENERAL'S OFFICE

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT A

DELIVERABLES, SERVICES, CRITICAL EVENTS, AND KEY STAFF

1. Critical Events: [Examples are included below.]

Number	Critical Event*	Date
1	Acceptance of Integrated Work Plan	
2	Detailed System Design Acceptance	
3	Data Conversion, Mapping, and Migration Acceptance	
4	The System Configuration is complete and Confirmation has been provided by Contractor that the System is ready for Acceptance Tests	
5	System Testing Completion and Confirmation has been provided by Contrator that the System is ready for Acceptance Tests	
6	User Acceptance of System	
7	Completion and Acceptance of Training	
8	System Go-Live	
9	System Acceptance	
10	ASP Services Go-Live	
11	ASP Services Acceptance	

* The dates for the Critical Events provided above will be finalized and agreed upon during Agreement negotiations or after the Integrated Work Plan is completed.

2. Key Staff.

2.1 During DDI, the Key Staff shall be those individuals who are identified in Sections 4.3.12, 4.3.13 and 7.3.12 of the RFP and Response.

2.2 During ASP Services, the Key Staff shall be those individuals who fill the positions identified in Sections 4.3.12, 4.3.13, 7.3.12 and 7.3.13 of the RFP and who are mutually agreed upon by the parties

2.3 Key Staff will be maintained as provided in Sections 4.3.12 and 7.3.12 of the RFP.

3. Maximum Amount. The Maximum Amount shall be \$_____.

4. DDI Deliverables [Examples are included below.]

Number	DDI Deliverable*	DSHS Acceptance Date
--------	------------------	----------------------------

1	Project Management Plan	
2	PCS Gap Analysis and Requirements Deliverable	
3	PCS Detail Design Specifications Deliverable	
4	Data Conversion Plan and Design Approach Deliverable	
5	Configuration Report(s) Deliverable	
6	Interfaces Design Specification Deliverable	
7	Test Plan Deliverable	
8	Documentation and Training Plan Deliverable	
9	Implementation Plan Deliverable	
10	System Release and Change Management Plan Deliverable	
11	Maintenance and Operations Plan Deliverable	
12	Operational and System Readiness Report	

* The dates for each DDI Deliverable provided above will be finalized and agreed upon during Agreement negotiations or after the Integrated Work Plan is completed.

5. ASP Service Charges

Description	Total Annual Charges
ASP Services and Warranty Services:	
1.1 Contractor ASP Service Charges begin at the conclusion of the Warranty Period, as specified in Section 12 of the Agreement.	
1.2 Contractor will not change the ASP Services Charges for the Initial Term.	
Total Annual Charges:	\$

6. Hourly Rates. _____

7. **Contingency Amount.** DSHS may, in its discretion, establish and utilize a contingency fund for Change Requests.

EXHIBIT B

EQUIPMENT AND SOFTWARE CONFIGURATION

- I. Equipment: The Equipment shall be as described in Response Section and as otherwise agreed upon in writing between the parties during the term.
- II. Software: Contractor shall provide: **[EXAMPLES ARE PROVIDED BELOW]**
 - A. The Software as described in Response Sections _____, including but not limited to all Interfaces listed in RFP Reference and all necessary Interfaces between Contractor supplied Software and systems described in _____.
 - B. Contractor's _____ Software
 - C. _____

EXHIBIT C

PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

#	Topic	Performance Standard	Liquidated Damages
1	Key Staff	During the entire term of the Agreement, Key Staff commitments made by Contractor must not be changed without 30 calendar days prior written notice to DSHS unless due to legally required leave of absence, sickness, death, resignation or mutually agreed upon termination of employment, of any named individual.	DSHS shall assess up to a maximum of \$25,000 per occurrence for each Key Staff person who is proposed in the Response and who is changed without proper notice and approved by DSHS for reasons other than legally required leave of absence, sickness, death, or termination of employment
2	Key Staff	The Contractor must replace Key Staff timely. Permanent replacement of Key Staff will take place within 30 calendar days of removal unless a longer period is approved by DSHS. Contractor shall appoint an interim replacement Key Staff within 1 business day of removal. Replacement and interim Key Staff are subject to DSHS approval. DSHS reserves the right to interview proposed replacements prior to approving them.	DSHS shall assess up to \$200 per business day for each business day after the initial 30 calendar days allowed in which an acceptable permanent replacement for that Key Staff position is not provided.
3	DDI Critical Events and Key DDI Deliverables	The Contractor must meet due dates for Acceptance of Critical Events and Deliverables during DDI. The Contractor's Status Reports will provide information on progress toward meeting these Critical Event dates and DDI Deliverable dates.	DSHS shall assess up to \$1,000 per calendar day from the agreed upon Critical Event Acceptance date and DDI Deliverable Acceptance date until the date each Critical Event or DDI Deliverable receives Acceptance from DSHS. DSHS shall assess up to \$25,000 per calendar day from the agreed upon Acceptance date that the System is not operational in accordance with its Specifications.
4	DDI Status Reports	The Contractor must provide DSHS bi-weekly status reports during DDI. The status reports at a minimum must include: <ul style="list-style-type: none"> • Key activities performed during the report period • Key activities planned for the report period that did not occur and why they did not occur • Key activities planned for the next report period • Progress on DDI critical events • Status of scope, schedule, and budget • Major issues affecting DDI and activities underway to resolve issues • Major risks affecting DDI and activities underway to 	DSHS shall assess up to \$200 per calendar day for each day an acceptable DDI bi-weekly Status Report is not timely delivered. If the bi-weekly Status Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable bi-weekly Status Report is received.

#	Topic	Performance Standard	Liquidated Damages
		mitigate risks <ul style="list-style-type: none"> Decisions made during the report period Pending decisions and status of activities underway to get resolution	
5	Maintenance and Operations (M&O) Critical Events	The Contractor must meet due dates for Acceptance of Critical Events during M&O (this does not include Change Requests that get implemented during M&O). The Contractor's Status Reports will provide information on progress toward meeting these Critical Event dates.	DSHS shall assess up to \$1,000 per calendar day from the agreed upon Critical Event Acceptance date until the date each Critical Event receives Acceptance from DSHS. DSHS shall also assess the cost of any monetary compensation awarded to a union or individual, fines, penalties, sanctions or disallowances imposed on the State and/or DSHS and any resulting State costs including but not limited to State staff time and legal fees.
6	M&O Status Reports	The Contractor must provide DSHS weekly status reports during M&O. The Status Reports at a minimum must include: <ul style="list-style-type: none"> Key activities performed during the Status Report period Key activities planned for the report period that did not occur and why they did not occur Key activities planned for the next report period Progress on M&O Critical Events Major issues underway affecting M&O and activities underway to resolve issues Major risks affecting M&O and activities underway to mitigate risks Decisions made during the report period Pending decisions and status of activities underway to get resolution 	DSHS shall assess up to \$200 per calendar day for each day an acceptable M&O Status Report is not timely delivered. If the Status Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable Status Report is received.
7	Preliminary Estimates for Potential Collective Bargaining Change Requests	During collective bargaining negotiations and collective bargaining arbitration periods, Contractor must provide cost and schedule estimates and assumptions for various Collective Bargaining Agreement (CBA) articles being negotiated at no cost to DSHS. The State will request this information via a Change Request and the Contractor must provide estimates in the timeframe given in the Change Request, which can range from 1 calendar day to 2 weeks or more. Through the course of collective bargaining negotiations and arbitration periods these CBA articles may evolve and Contractor must provide new cost and schedule	DSHS shall assess the cost of the State and/or the cost of an independent third party determining a cost and schedule estimate if the Contractor does not provide an acceptable CBA article cost and schedule estimate and assumptions response in the timeframe specified in the Change Request. DSHS shall also assess the cost of any monetary compensation awarded to a union or individual, fines, penalties, sanctions or disallowances imposed on the State and/or DSHS and any resulting State costs including but not limited to State staff time and legal fees if

#	Topic	Performance Standard	Liquidated Damages
		estimates and assumptions for modified CBA articles being negotiated at no cost to DSHS. The State will request this information via a Change Request and the Contractor must provide a response in the timeframe given in the Change Request, which can range from 1 calendar day to 2 weeks or more.	Contractor does not provide an acceptable schedule estimate and assumptions response in the timeframe specified in the Change Request.
8	Preliminary Estimates for Potential Legislative Change Requests	During the annual State legislative session Contractor must provide cost and schedule estimates and assumptions for various legislation being proposed at no cost to DSHS. The State will request information in writing and the Contractor must provide, at no cost to DSHS, estimates in the timeframe given in the Change Request, which can be between 1 calendar day and 2 weeks.	DSHS shall assess up to \$200 per calendar day for each day an acceptable proposed legislation cost and schedule response is not timely received.
9	Change Request Management	Contractor must provide, within 15 calendar days of receipt of a DSHS Change Request and at no cost to DSHS, comprehensive and accurate responses to all DSHS Change Requests. Responses must include proposed solution, cost, Bidder resource needs, State resource needs, and time frames.	DSHS shall assess up to \$1,000 per calendar day for each day an acceptable Change Request response is not timely received. If a Change Request response is received on time but the information reported is inaccurate, unacceptable or incomplete, DSHS shall assess up to \$1,000 per calendar day until an acceptable response is received.
10	Change Request Implementation	Contractor must implement DSHS requested and approved Change Requests to the Provider Compensation Subsystem as approved and prioritized by DSHS. Due dates will be mutually agreed upon by DSHS and the Contractor at the time the Change Request is approved.	DSHS shall assess the amount of any monetary compensation awarded to a union or individual, fines, penalties, sanctions or disallowances imposed on the State and/or DSHS and any resulting State costs including but not limited to State staff time and legal fees., or up to \$2,000 per calendar day for each day from the date an acceptable Change Request was due until the Contractor receives Acceptance from DSHS, whichever is greater.
11	Configuration Management	Contractor must obtain DSHS prior written approval before any changes are made to business rules, including edits and audits.	DSHS shall assess up to \$10,000 per occurrence for failure to obtain DSHS prior written approval for changes to business rules including edits and audits.
12	Weekly Change Request Reports	Contractor must provide DSHS bi-weekly reports identifying the status of all outstanding Change Requests and resulting Change Orders including those closed since the last report. The report will include original report date, planned completion date, priority, status, actual completion date.	DSHS shall assess up to \$200 per calendar day for each day an acceptable bi-weekly report is not timely delivered. If the report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable report is received.
13	Weekly Problem Reports	Contractor must provide DSHS bi-weekly reports identifying the status of all outstanding Problem Reports including those closed since the last report. The report will include original report date, planned completion	DSHS shall assess up to \$200 per calendar day for each day an acceptable bi-weekly report is not timely received. If the report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable report is received.

#	Topic	Performance Standard	Liquidated Damages								
		date, severity level, status, actual completion date.									
14	Weekly Incident Reports	Contractor must provide DSHS bi-weekly reports identifying the status of all outstanding Incident Reports including those closed since the last report. The report will include original report date, planned completion date, severity level, status, actual completion date.	DSHS shall assess up to \$200 per calendar day for each day an acceptable bi-weekly report is not timely received. If the report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable report is received.								
15	System Maintenance	<p>Contractor must provide maintenance support to correct System Deficiencies for all System components installed and operated within Contractor and State Sites. Based upon notification of Deficiency, Contractor must create a Problem Report describing the Deficiency and identifying Contractor’s recommended resolution and time frame. Contractor must report to DSHS its recommended resolution and an estimated fix date/time within the time frames required. Each Deficiency must be fixed within the time frames required. Resolution time frames may be different for System components operated and maintained within Contractor’s Site than those operated and maintained within State Sites. Problem Reports will be updated by Contractor with a description of the solution and the date and time the Deficiency was solved and System resumed operations. DSHS will determine the severity level assigned to a Deficiency. The System refers to all operational components Contractor is responsible for maintaining.</p> <p>Level 1 - Emergency - The System no longer functions.</p> <ul style="list-style-type: none">• Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.• Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 hours.• Performance Standard for correction of Deficiency associated with System component located at Contractor Site is 24 hours.• Performance Standard for correction of Deficiency associated with System component located at State	<p>DSHS shall assess the liquidated damages as specified below, per 24 hour period for each 24 hour period, or portion thereof, for failure to correct a Level 1 maintenance Deficiency within the Performance Standard correction time.</p> <table><tr><td>\$10,000/24 hour period</td><td>0 to 72 hours beyond Performance Standard</td></tr><tr><td>\$20,000/24 hour period</td><td>73 to 168 hours beyond Performance Standard</td></tr><tr><td>\$30,000/24 hour period</td><td>169 to 336 hours beyond Performance Standard</td></tr><tr><td>\$40,000/24 hour period</td><td>> 336 hours beyond Performance Standard</td></tr></table>	\$10,000/24 hour period	0 to 72 hours beyond Performance Standard	\$20,000/24 hour period	73 to 168 hours beyond Performance Standard	\$30,000/24 hour period	169 to 336 hours beyond Performance Standard	\$40,000/24 hour period	> 336 hours beyond Performance Standard
\$10,000/24 hour period	0 to 72 hours beyond Performance Standard										
\$20,000/24 hour period	73 to 168 hours beyond Performance Standard										
\$30,000/24 hour period	169 to 336 hours beyond Performance Standard										
\$40,000/24 hour period	> 336 hours beyond Performance Standard										

#	Topic	Performance Standard	Liquidated Damages																
		<p>Site is 24 hours.</p> <p>Level 2 - Disabled, No Workaround – A business function or System component does not work as required, and no acceptable workaround is available or a workaround that is acceptable to DSHS is not available.</p> <ul style="list-style-type: none">• Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.• Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 hours.• Performance Standard for correction of Deficiency associated with System component located at Contractor Site is 48 hours.• Performance Standard for correction of Deficiency associated with System component located at State Site is 48 hours. <p>Level 3 - Disabled, Workaround – A business function or System component does not work as required, but a workaround that is acceptable to DSHS is available.</p> <ul style="list-style-type: none">• Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.• Performance Standard for reporting recommended resolution and estimated fix date/time for all system components is 2 hours.• Performance Standard for correction of Deficiency associated with System component located at Contractor Site is 3 business days.• Performance Standard for correction of Deficiency associated with System component located at State Site is 4 business days.	<p>DSHS shall assess the liquidated damages as specified below, per 24 hour period for each 24 hour period, or portion thereof, for failure to correct a Level 2 maintenance Deficiency within the Performance Standard correction time.</p> <table><tr><td>\$ 8,000/24 hour period</td><td>0 to 72 hours beyond Performance Standard</td></tr><tr><td>\$16,000/24 hour period</td><td>73 to 168 hours beyond Performance Standard</td></tr><tr><td>\$24,000/24 hour period</td><td>169 to 336 hours beyond Performance Standard</td></tr><tr><td>\$32,000/24 hour period</td><td>> 336 hours beyond Performance Standard</td></tr></table> <p>DSHS shall assess the liquidated damages as specified below, per 24 hour period for each 24 hour period, or portion thereof, for failure to correct a Level 3 maintenance Deficiency within the Performance Standard correction time.</p> <table><tr><td>\$ 3,000/24 hour period</td><td>0 to 72 hours beyond Performance Standard</td></tr><tr><td>\$ 6,000/24 hour period</td><td>73 to 168 hours beyond Performance Standard</td></tr><tr><td>\$ 9,000/24 hour period</td><td>169 to 336 hours beyond Performance Standard</td></tr><tr><td>\$12,000/24 hour period</td><td>> 336 hours beyond Performance Standard</td></tr></table>	\$ 8,000/24 hour period	0 to 72 hours beyond Performance Standard	\$16,000/24 hour period	73 to 168 hours beyond Performance Standard	\$24,000/24 hour period	169 to 336 hours beyond Performance Standard	\$32,000/24 hour period	> 336 hours beyond Performance Standard	\$ 3,000/24 hour period	0 to 72 hours beyond Performance Standard	\$ 6,000/24 hour period	73 to 168 hours beyond Performance Standard	\$ 9,000/24 hour period	169 to 336 hours beyond Performance Standard	\$12,000/24 hour period	> 336 hours beyond Performance Standard
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\$16,000/24 hour period	73 to 168 hours beyond Performance Standard																		
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\$32,000/24 hour period	> 336 hours beyond Performance Standard																		
\$ 3,000/24 hour period	0 to 72 hours beyond Performance Standard																		
\$ 6,000/24 hour period	73 to 168 hours beyond Performance Standard																		
\$ 9,000/24 hour period	169 to 336 hours beyond Performance Standard																		
\$12,000/24 hour period	> 336 hours beyond Performance Standard																		

#	Topic	Performance Standard	Liquidated Damages																
		<p>Level 4 - Minor - Non-critical, but having a negative effect on one or more business functions or System components.</p> <ul style="list-style-type: none">Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 4 business days.Performance Standard for correction of problem associated with System component located at Contractor Site is 15 business days.Performance Standard for correction of Deficiency associated with System component located at State Site is 15 business days. <p>Level 5 - Cosmetic - Non-critical and non-impacting to one or more business functions or System components.</p> <ul style="list-style-type: none">Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 5 business days.Performance Standard for correction of Deficiency associated with System component located at Contractor site is 30 business days.Performance Standard for correction of Deficiency associated with System component located at State site is 30 business days.	<p>DSHS shall assess the liquidated damages as specified below, per 24 hour period for each 24 hour period, or portion thereof, for failure to correct a Level 4 maintenance Deficiency within the Performance Standard correction time.</p> <table><tr><td>\$ 1,000/24 hour period</td><td>0 to 72 hours beyond Performance Standard</td></tr><tr><td>\$ 1,250/24 hour period</td><td>73 to 168 hours beyond Performance Standard</td></tr><tr><td>\$ 1,500/24 hour period</td><td>169 to 336 hours beyond Performance Standard</td></tr><tr><td>\$ 2,000/24 hour period</td><td>> 336 hours beyond Performance Standard</td></tr></table> <p>DSHS shall assess the liquidated damages as specified below, per 24 hour period for each 24 hour period, or portion thereof, for failure to correct a Level 5 maintenance Deficiency within the Performance Standard correction time.</p> <table><tr><td>\$ 500/24 hour period</td><td>0 to 72 hours beyond Performance Standard</td></tr><tr><td>\$ 750/24 hour period</td><td>73 to 168 hours beyond Performance Standard</td></tr><tr><td>\$ 1,000/24 hour period</td><td>169 to 336 hours beyond Performance Standard</td></tr><tr><td>\$ 1,250/24 hour period</td><td>> 336 hours beyond Performance Standard</td></tr></table>	\$ 1,000/24 hour period	0 to 72 hours beyond Performance Standard	\$ 1,250/24 hour period	73 to 168 hours beyond Performance Standard	\$ 1,500/24 hour period	169 to 336 hours beyond Performance Standard	\$ 2,000/24 hour period	> 336 hours beyond Performance Standard	\$ 500/24 hour period	0 to 72 hours beyond Performance Standard	\$ 750/24 hour period	73 to 168 hours beyond Performance Standard	\$ 1,000/24 hour period	169 to 336 hours beyond Performance Standard	\$ 1,250/24 hour period	> 336 hours beyond Performance Standard
\$ 1,000/24 hour period	0 to 72 hours beyond Performance Standard																		
\$ 1,250/24 hour period	73 to 168 hours beyond Performance Standard																		
\$ 1,500/24 hour period	169 to 336 hours beyond Performance Standard																		
\$ 2,000/24 hour period	> 336 hours beyond Performance Standard																		
\$ 500/24 hour period	0 to 72 hours beyond Performance Standard																		
\$ 750/24 hour period	73 to 168 hours beyond Performance Standard																		
\$ 1,000/24 hour period	169 to 336 hours beyond Performance Standard																		
\$ 1,250/24 hour period	> 336 hours beyond Performance Standard																		
16	System Availability and Network	Every System component, (except the Web Portal) including but not limited to corresponding network connectivity, must have Availability for State use in	DSHS shall assess liquidated damages as specified below, per hour for each hour, or portion thereof, if the System fails to meet these Availability Performance Standards during non-critical business cycles.																

#	Topic	Performance Standard	Liquidated Damages
	Connectivity	<p>accordance with Specifications 99% of the time during normal business hours of 6:00 AM to 7:00 PM Monday through Friday Pacific Time and 97% of the time during non-business hours. This Performance Standard is especially important during critical business cycles and prior to the following critical deadlines:</p> <ul style="list-style-type: none"> • 24 hour period prior to cutoff date of invoice claim inputs from Providers • Scheduled payment runs • Scheduled invoice runs • Scheduled monthly, quarterly and annual remittance to third parties 	<p>\$1,000/hour 0 to 24 hours beyond the Performance Standard \$2,000/hour 24 to 48 hours beyond the Performance Standard \$3,000/hour > 48 hours beyond the Performance Standard</p> <p>DSHS shall assess liquidated damages as specified below, per hour for each hour, or portion thereof, if the System fails to meet these Availability Performance Standards during critical business cycles and/or prior to critical deadlines.</p> <p>\$ 5,000/hour 0 to 24 hours beyond the Performance Standard \$ 7,500/hour 24 to 48 hours beyond the Performance Standard \$10,000/hour > 48 hours beyond the Performance Standard</p>
17	Web Portal Availability and Network Connectivity	<p>The PCS Web Portal including but not limited to (corresponding network connectivity) must have Availability 99% of the time 24 hours per day, every day of the year. Scheduled down time will not exceed 1 outage per week of a maximum of 1 hour to be carried out at the time of the week's lowest web portal activity. Additional down time needed must be approved by DSHS ahead of time in writing. The week's lowest web portal activity will be agreed to initially by the Contractor and DSHS and then re-determined by review of web transaction statistics 6 months after full System implementation.</p>	<p>DSHS shall assess liquidate damages, as specified below, per hour for each hour, or portion there of, if the Web Portal fails to meet these Availability Performance Standards.</p> <p>\$1,000/hour 0 to 24 hours beyond the Performance Standard \$2,000/hour 24 to 48 hours beyond the Performance Standard \$3,000/hour > 48 hours beyond the Performance Standard</p>
18	Availability Performance Reports	<p>Contractor must provide DSHS a monthly Availability Performance Report which includes the following:</p> <ul style="list-style-type: none"> • Expected number of web portal available hours in the report period • Actual number of web portal available hours in the report period • Expected number of online network available hours in the report period • Actual number of online network available hours in the report period • Expected number of IVR network available hours in the report period • Actual number of IVR network available hours in the report period • Expected number of interface network available 	<p>DSHS shall assess up to \$200 per calendar day for each day an acceptable Availability Performance Report is not timely received. If an Availability Performance Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable Availability Performance Report is received.</p>

#	Topic	Performance Standard	Liquidated Damages
		<p>hours in the report period</p> <ul style="list-style-type: none"> Actual number of interface network available hours in the report period 	
19	System Performance – Response Times	<p>Contractor must meet the following response time Performance Standards for the System for up to 400 concurrent internal State users during normal business hours of 7:00 AM to 7:00 PM Pacific Time Monday through Friday:</p> <p>Record Inquiry Search Response Time: The time elapsed from receipt of the transaction by the Contractor from the switch vendor at the network demarcation point until the Contractor completes delivery of the transaction to the switch vendor at the demarcation point must not exceed 3 seconds 95% of the time for any inquiry by State staff.</p> <p>Record Create, Update, Delete Response Time: The elapsed time from receipt of the transaction by the Contractor from the switch vendor at the network demarcation point until the bidder completes delivery of the transaction back to the switch vendor at the demarcation point must not exceed 4 seconds 95% of the time for any create, update, or delete transactions.</p> <p>Non-Web Portal Web Page Display Time: Each web page produced by the System shall be fully displayed in no longer than 10 seconds from the time the user requested it for 95% of the displays requested of the System.</p> <p>Print Initiation Time: The parties will agree during DDI on this Response Time.</p>	<p>DSHS shall assess liquidated damages, as specified below, for total minutes within a business week (Monday – Friday, 6:00 AM – 7:00 PM Pacific Time) where any response time falls below the applicable Performance Standard.</p> <p>\$ 2,000/week Less than 20 minutes \$ 5,000/week 20 to 60 minutes \$10,000/week More than 60 minutes</p>
20	System Performance Response Times	<p>Contractor must meet the following response time Performance Standards for the Web Portal web pages 24 hours a day, every day of the year:</p> <ul style="list-style-type: none"> Web Page Display Time: Each Web Portal web page produced by the System shall be fully displayed in no longer than 10 seconds from the 	<p>DSHS shall assess liquidated damages, as specified below, for total minutes within a week where any response time falls below the applicable Performance Standard.</p> <p>\$ 2,000/week Less than 20 minutes \$ 5,000/week 20 to 60 minutes \$10,000/week More than 60 minutes</p>

#	Topic	Performance Standard	Liquidated Damages
		time the user requested it for 95% of the displays requested of the System, when using a 56k bits per second modem connection.	
21	System Performance Reports	<p>Contractor must provide DSHS monthly a System Performance Report which includes the following:</p> <ul style="list-style-type: none"> • Average record inquiry search response time during normal business hours. • Number of minutes during normal business hours where the record inquiry search response time fell below the performance standard. • Average record, create, update or delete response time during normal business hours. • Number of minutes during normal business hours where the record create, update or delete response time fell below the performance standard. • Average non-web portal web page display time during normal business hours. • Number of minutes during normal business hours where the non-web portal web page display time fell below the performance standard. • Average web portal web page display time. • Number of minutes where the web portal web page display time fell below the performance standard. 	<p>DSHS shall assess up to \$200 per calendar day for each day an acceptable System Performance Report is not timely received. If a System Performance Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable System Performance Report is received.</p>
22	Provider Help Line	<p>Contractor must provide and staff a toll-free help line for providers to provide consultation services. The help line must have Availability 100% of the time during normal business hours of 7:00 AM to 7:00 PM Pacific Time Monday – Friday and 8:00 AM to 1:00 PM Pacific Time Saturday.</p> <p>The Contractor must ensure the Provider help line meets the following criteria:</p> <ul style="list-style-type: none"> • First Call Resolution rate of at least 86%. • At least 99% of all calls answered in 30 seconds or less (a pick up system may be used). • Less than 1% of calls get a busy signal. • When on hold, abandoned call rate after 30 seconds is less than 5%. • Less than 1% of calls are placed on hold for more 	<p>DSHS shall assess up to \$100 per hour for each hour the toll-free line lacks Availability during normal business hours.</p> <p>DSHS shall also assess up to \$100 for each occurrence that DSHS identifies through its recurring monitoring processes that Provider Help Line staff were not knowledgeable, helpful or polite.</p> <p>DSHS shall also assess up to \$25,000 for failure to meet the Performance Standards for a monthly reporting period for any Contractor operated toll-free line.</p>

#	Topic	Performance Standard	Liquidated Damages
		<p>than 5 minutes.</p> <p>If a Provider reports a problem via the Provider Help Line, the Contractor must log the problem in the Problem Report database and provide a ticket/tracking number to DSHS and include the problem in the next bi-weekly report for Problem Reports.</p>	
23	Provider Fax Line	Contractor must provide a toll-free fax line for Providers to send information to Provider Help Line staff. The toll-free fax line must have Availability 100% of the time during normal business hours of 7:00 AM to 7:00 PM Pacific Time Monday – Friday and 8:00 AM to 1:00 PM Pacific Time Saturday.	DSHS shall assess up to \$100 per hour for each hour the toll-free line lacks Availability during normal business hours.
24	Provider Help Line and Provider Fax Line Monitoring Report	<p>Contractor must provide DSHS monthly monitoring reports to include agreed upon metrics for monitoring the Provider Help Line (PHL) and the Provider Fax Line (PFL) performance. Reports will include at a minimum:</p> <ul style="list-style-type: none"> • Number of PHL calls, includes the number of calls getting a busy single, and all abandoned calls. • PHL First Call Resolution Rate. • Number of PHL calls answered in 30 seconds or less. • Number of PHL calls answered in over 30 seconds. • Number of PHL calls getting a busy single. • Number of PHL calls placed on hold. • Number of PHL calls put on hold more than 30 seconds. • Number of PHL calls put on hold more than 30 seconds and abandoned. • Number of PHL calls on hold more than 5 minutes. • Number of PHL calls in defined categories. • Availability rate of PFL. 	DSHS shall assess up to \$200 per calendar day for each day an acceptable Monitoring Report is not timely received. If the Monitoring Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable Monitoring Report is received.
25	Help Desk	Contractor must provide and staff a toll-free technical support Help Desk for State Staff and third parties for reporting all System Deficiencies. The Help Desk must have Availability 100% of the time during normal business hours of 7:00 AM to 7:00 PM Pacific Time Monday – Friday.	<p>DSHS shall assess up to \$100 per hour for each hour the toll-free line lacks Availability during normal business hours.</p> <p>DSHS shall also assess up to \$100 for each occurrence that DSHS identifies through its recurring monitoring processes that Help-Desk staff were not knowledgeable, helpful or polite.</p>

#	Topic	Performance Standard	Liquidated Damages
		<p>The Contractor must ensure the Help Desk meets the following criteria:</p> <ul style="list-style-type: none"> • First Call Resolution rate of at least 75%. • At least 99% of all calls are answered in 30 seconds or less (a pick-up system may be used). • Less than 1% of calls get a busy signal. • When on hold, abandoned call rate after 30 seconds is less than 5%. • Less than 1% of calls are placed on hold for more than 5 minutes. 	<p>DSHS shall also assess up to \$25,000 for failure to meet any of these Help Desk Performance Standards for a monthly reporting period for any Contractor operated toll-free line.</p>
26	Emergency Call Response	<p>Contractor must provide emergency “on call” technical support for all hours outside of normal business hours for State staff and third parties. Performance standards for the “on call” technical support are as follows:</p> <ul style="list-style-type: none"> • The Contractor must respond to DSHS in 30 minutes or less of DSHS placing an emergency call. <p>(Contractor must still adhere to Performance Standard #15)</p>	<p>DSHS shall assess up to \$200 per minute when no response is received by DSHS from Contractor within 30 minutes of DSHS placing an emergency call until a response is received.</p>
27	Help Desk and Emergency Call Response Monitoring Report	<p>Contractor must provide DSHS monthly monitoring to include agreed upon metrics for monitoring Help Desk (HD) and Emergency Call Response (ECR) performance. Reports will include at a minimum:</p> <ul style="list-style-type: none"> • Number of HD calls, includes the number of calls getting a busy single, and all abandoned calls. • HD First Call Resolution Rate. • Number of HD calls answered in 30 seconds or less. • Number of HD calls answered in over 30 seconds. • Number of HD calls getting a busy single. • Number of HS calls placed on hold. • Number of HD calls put on hold more than 30 seconds. • Number of HD calls put on hold more than 30 seconds and abandoned. • Number of HD calls on hold more than 5 minutes. • Number of Emergency calls. • Number of Emergency calls not responded to in 30 or less minutes. 	<p>DSHS shall assess up to \$200 per calendar day for each day an acceptable Monitoring Report is not timely received. If the Monitoring Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable Monitoring Report is received.</p>

#	Topic	Performance Standard	Liquidated Damages
28	Mandated Reporting	Contractor must ensure that all Mandated Reports (including but not limited to Federal, State, union, Provider/employee (i.e. 1099s and W-2s) and third party reports) are accurate and complete, and can be produced on demand, or are produced and delivered based on a pre-determined schedule.	<p>DSHS shall assess up to \$500 per calendar day for each day an acceptable Mandated Report is not timely received. If a Mandated Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$500 per calendar day until an acceptable report is received.</p> <p>DSHS shall also assess the cost of any monetary compensation awarded to a union or individual, fines, penalties, sanctions or disallowances imposed on the State and/or DSHS and any resulting State costs including but not limited to State staff time and legal fees.</p>
29	Mail, Fax and Time Sheet Processing	<p>For non-expedited payment related items, Contractor must process all mail and faxes received, and input all timesheets and transmittal documents received within 2 business days, which includes editing and resolving errors resulting from input.</p> <p>For expedited payment related items, Contractor must process all mail and faxes received, and input all timesheets and transmittal documents received within 1 business day, which includes editing and resolving errors resulting from input.</p>	<p>For non-expedited payment related items, DSHS shall assess up to \$100 per incident for each piece of mail received and not processed within 2 business days.</p> <p>For expedited payment related items, DSHS shall assess up to \$100 per incident for each piece of mail received and not processed within 1 business day.</p> <p>For non-expedited payment related items, DSHS shall assess up to \$100 per incident for each fax received and not processed within 2 business days.</p> <p>For expedited payment related items, DSHS shall assess up to \$100 per incident for each fax received and not processed within 1 business day.</p> <p>For non-expedited payment related items, DSHS shall assess up to \$100 per incident for each timesheet received and not input within 2 business days.</p> <p>For expedited payment related items, DSHS shall assess up to \$100 per incident for each timesheet received and not input within 1 business day.</p>
30	Mail, Fax and Time Sheet Processing Report	<p>Contractor must provide DSHS monthly Performance Reports to include agreed upon metrics for monitoring mail and time sheet processing. Performance Reports will include at a minimum:</p> <ul style="list-style-type: none"> • Number of pieces of mail received • Number of pieces of mail not processed within 2 business days • Number of timesheets received • Number of timesheets not input within 2 business days 	DSHS shall assess up to \$200 per calendar day for each day an acceptable Performance Report is not timely received. If the Performance Report is received on time but the information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable Performance Report is received.
31	Mail Delivery	Contractor must deliver to the US Postal Service, no later than 5 PM local time the day following production, all batch/production materials to be mailed.	DSHS shall assess up to \$25 per calendar day for each piece of mail which is not delivered to the US Postal Service by 5 PM local time the day following production.
32	Mail Delivery Report	Contractor must provide DSHS, or parties designated by DSHS, a monthly Mail Delivery Report to verify	DSHS shall assess up to \$200 per calendar day for each day an acceptable Mail Delivery Report is not timely received. If the Mail Delivery Report is received on time but the

#	Topic	Performance Standard	Liquidated Damages
		mailings, damaged production pieces and reprints.	information reported is inaccurate or incomplete, DSHS shall assess up to \$200 per calendar day until an acceptable Mail Delivery Report is received.
33	Operations - Handling of Remittances and Data	Contractor shall issue required Remittances and Data to Federal and State Authorities, Unions, Providers and Other Third Parties according to a schedule approved by DSHS and, where appropriate, within the guidelines provided by the recipient.	<p>DSHS shall assess up to \$10,000 per occurrence for failure of timely issuance of Remittances and Data.</p> <p>DSHS shall also assess the cost of any monetary compensation awarded to a union or individual, fines, penalties, sanctions or disallowances imposed on the State and/or DSHS and any resulting State costs including but not limited to State staff time and legal fees.</p>
34	System Security	Contractor must maintain and document security features for all Contractor supported automation systems (includes future changes) to ensure the System is protected against unauthorized access.	<p>DSHS shall assess up to \$500 for each person impacted for each security breach occurrence.</p> <p>DSHS shall also assess the cost of producing and sending all necessary notifications.</p> <p>DSHS shall also assess the cost of providing credit monitoring for each person impacted by the security breach.</p> <p>DSHS shall also assess the cost of all monetary compensation awarded to a union or individual, fines, penalties, sanctions, damages, claims and lawsuits imposed on the State and/or DSHS for all Contractor caused security breaches and any resulting State costs including but not limited to State staff time and legal fees.</p>
35	Disaster Recovery	Contractor must prepare and submit to DSHS a comprehensive Disaster Recovery Plan annually. The first plan will be due 30 calendar days prior to Go-Live. Annual plans will be due May 31 st of each year.	DSHS shall assess up to \$500 per calendar day for each day an acceptable Disaster Recovery Plan is not timely received. If a Disaster Recovery Plan is received on time but is inaccurate or incomplete, DSHS shall assess up to \$500 per calendar day until an acceptable Disaster Recovery Plan is received.
36	Disaster Recovery	Contractor must demonstrate annually to DSHS that its disaster recovery capabilities comply with applicable Specifications in coordination with DSHS Disaster Recovery demonstration requirements.	DSHS shall assess up to \$500 per calendar day beginning the first day of the month in which the disaster recovery capabilities were scheduled to have been demonstrated until the demonstration is complete and approved by DSHS.
37	System Turnover	<p>Up to 24 months prior to the end of the initial Agreement term or any renewal thereof, Contractor must develop and implement a DSHS approved Turnover Plan covering the possible turnover of the System and operational activities to either the State or a successor Contractor. The Turnover Plan must be a comprehensive deliverable detailing the proposed schedule, activities, and resource requirements associated with the turnover tasks.</p> <p>Within 30 calendar days from the date of the turnover of System operations, Contractor must provide DSHS with a Turnover Results Report documenting the completion</p>	<p>DSHS shall assess up to \$500 per calendar day for each day an acceptable Turnover Plan is not timely received. If a Turnover Plan is received on time but the plan does not contain the required elements, DSHS shall assess up to \$500 per calendar day until an acceptable Turnover Plan is received.</p> <p>DSHS shall also assess up to \$500 per calendar day for each day an acceptable Turnover Results Report is not received. If a Turnover Results Report is received on time but the report is inaccurate or incomplete, DSHS shall assess up to \$500 per calendar day until an</p>

#	Topic	Performance Standard	Liquidated Damages
		and results of each step of the Turnover Plan. Turnover will not be considered complete until this document receives Acceptance from DSHS.	acceptable Turnover Results Plan is received.
38	System Turnover - Documentation	Contractor must provide to DSHS or its designee, within 15 business days of any request, all updated computer Software programs, data and reference tables, scripts, and other documentation and records required by the State or its designee to operate the System.	DSHS shall assess up to \$5,000 for each calendar day beyond the 15 business days that all required materials are not delivered by Contractor.
39	System Data	Contractor must provide DSHS monthly complete System Data (including but not limited to configuration rules and history) in a format designated by DSHS.	DSHS shall assess up to \$1,000 per day for each calendar day the monthly Data is late.
39	System Documentation	Contractor must provide DSHS complete, accurate and up-to-date documentation of the System. Documentation will include, at a minimum, technical and user manuals used in conjunction with the system, in whole and in part, and documentation of the Equipment and Software Configurations, including without limitation manuals provided by the licensors of the Third-Party Software.	DSHS shall assess up to \$500 per calendar day for each day from the scheduled Acceptance date until the date each item of Documentation is provided and receives Acceptance from DSHS.

EXHIBIT D

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made as of this ___ day of _____, 200_ (the "Effective Date"), among _____ ("ESCROW AGENT"), _____ ("LICENSOR"), and the State of Washington acting by and through Department of Social and Health Services, an agency of Washington State government ("LICENSEE").

RECITALS

LICENSOR and LICENSEE have entered into a Provider Compensation Subsystem Agreement dated the Effective Date (the "Provider Compensation Subsystem Agreement") to license certain Third-Party Software (as defined in the Provider Compensation Subsystem Agreement) (the "Software") upon specified terms and conditions; and

To assure the continued availability and usefulness of such Software, LICENSOR has agreed to establish and maintain in escrow with ESCROW AGENT the Software source code and certain documentation therefor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Deposit in Escrow.

1.1 Within 30 days of the Effective Date as defined in the Provider Compensation Subsystem Agreement, LICENSOR shall deliver to ESCROW AGENT a sealed package containing the same current version of the source code for the Software which is owned by third parties, licensed to LICENSEE by LICENSOR, and is described as the Contractor Software in the Provider Compensation Subsystem Agreement, programmer notes, its database schema and architecture, and its related documentation (collectively, the "Source Materials"). LICENSOR shall identify each item in said package and certify the completeness and accuracy of the Source Materials in a letter forwarding the same to ESCROW AGENT, with a copy of each letter to LICENSEE. Immediately upon receipt of the package, ESCROW AGENT shall give notice to LICENSEE of such receipt.

1.2 LICENSOR shall deliver revisions of the Source Materials, including the Source Code for the Software, to ESCROW AGENT as and when corresponding revisions of the Executable Code for the Software are delivered to LICENSEE in accordance with the Provider Compensation Subsystem Agreement. At such time as any modifications or revisions to the Source Materials are deposited with ESCROW AGENT, LICENSOR shall give written notice of such deposits to LICENSEE.

1.3 ESCROW AGENT shall acknowledge receipt of all revisions of or additions to the Source Materials by sending written acknowledgment thereof to both LICENSOR and LICENSEE.

1.4 Upon receipt of a new revision, ESCROW AGENT agrees to return to LICENSOR all such Source Materials from previous revisions as specified by LICENSOR in writing to ESCROW AGENT.

2. Release From Escrow.

2.1 ESCROW AGENT shall seven days following receipt of an affidavit, which is from an officer of LICENSEE to ESCROW AGENT sent via certified mail with return receipt requested, and which states that one of the following events has occurred, proceed in accordance with the procedure described in Sections 2.3 through 2.7 below if:

2.1.1 LICENSOR has made an assignment for the benefit of creditors; or

2.1.2 LICENSOR institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or

2.1.3 A receiver or similar officer has been appointed to take charge of all or part of LICENSOR's assets; or

2.1.4 LICENSOR terminates its maintenance and support services for LICENSEE for the Software or breaches its support and maintenance obligations for the Software for LICENSEE, whether due to its ceasing to conduct business generally or otherwise; or

2.1.5 LICENSOR fails to make timely payments of fees and other costs required under this Agreement.

2.2 LICENSEE shall send a copy of the affidavit to LICENSOR via certified mail with return receipt requested, simultaneously with its affidavit to ESCROW AGENT. Upon its receipt of the affidavit as provided above in Section 2.1, ESCROW AGENT shall immediately give written notice to LICENSOR, attaching a copy of the affidavit to the notice, via certified mail with return receipt requested.

2.3 Upon receipt of such notices in accordance with Sections 2.1 and 2.2, LICENSOR shall have 30 days to review LICENSEE's affidavit requesting release from escrow as provided for in Section 2.1 above.

2.4 If LICENSOR does not give notice to ESCROW AGENT within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall automatically release the Source Materials to LICENSEE. The Source Materials shall be used by LICENSEE subject to the Provider Compensation Subsystem Agreement and solely for support and maintenance for the Software within the provisions of the Provider Compensation Subsystem Agreement. Delivery of the Source

Materials to LICENSEE in accordance with provisions hereof shall automatically terminate this Escrow Agreement.

2.5 If LICENSOR does give ESCROW AGENT notice within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall retain the Source Materials in escrow while LICENSOR and LICENSEE either:

2.5.1 Settle the dispute among themselves and jointly give notice to ESCROW AGENT in writing of the result; or

2.5.2 Submit the dispute to litigation for resolution in accordance with the terms of this Agreement.

2.6 In the event of litigation, ESCROW AGENT shall dispose of the Source Materials as directed by the court of competent jurisdiction's finding given in writing to all parties.

2.7 Each party shall bear its own costs incurred in any litigation as set forth in Section 2.5 above

3. Ownership of Source Material.

3.1 The tangible medium comprising the escrowed Source Materials, but not the source code or technical specifications and other information embodied in such tangible media, shall be in the possession of ESCROW AGENT as soon as such material is received by ESCROW AGENT and at all times until the Source Materials are returned to LICENSOR or to LICENSEE as outlined in Section 2 above.

3.2 ESCROW AGENT, LICENSOR, and LICENSEE recognize and acknowledge that ownership of the source code itself shall remain the sole and exclusive proprietary property of LICENSOR at all times and that nothing in this Agreement shall be interpreted to deprive LICENSOR of any right, title or interest in or to the Source Materials.

3.3 It is expressly understood and agreed that LICENSEE's right to obtain the source code and other documentation from escrow is subject to the terms described in Section 8 of the Provider Compensation Subsystem Agreement and that LICENSEE shall have no right or claim to LICENSOR's proprietary rights in the Software.

4. Storage and Security.

4.1 ESCROW AGENT will act as custodian of the Source Materials until the escrow is terminated. ESCROW AGENT shall establish, under its control, a secure receptacle for the purpose of storing the Source Materials.

4.2 The Source Materials deposited with ESCROW AGENT by LICENSOR pursuant to this Escrow Agreement shall remain the exclusive property of the LICENSOR, except as otherwise provided in Section 2.

4.3 Except as provided in this Agreement, ESCROW AGENT agrees that:

4.3.1 It shall not divulge, disclose or otherwise make available to any parties other than LICENSOR or LICENSEE, or make any use whatsoever, of the Source Materials;

4.3.2 It shall not permit any person access to the Source Materials, except as may be necessary for ESCROW AGENT's authorized representatives to perform its functions under this Agreement;

4.3.3 Access to the Source Materials by LICENSOR shall be granted by ESCROW AGENT only to those persons duly authorized in writing by a competent officer of LICENSOR or as provided herein; and

4.3.4 Access to the Source Materials shall not be granted without compliance with all security and identification procedures instituted by ESCROW AGENT.

4.4 ESCROW AGENT shall, upon LICENSEE's request and pursuant to Section 6.4.2 of the Provider Compensation Subsystem Agreement, verify or determine that the Source Materials deposited with ESCROW AGENT by LICENSOR do, in fact, consist of those items which LICENSOR is obligated to deliver under any agreement.

4.5 ESCROW AGENT shall accept, store and deliver the Source Materials deposited with it by LICENSOR, in accordance with the terms and conditions of this Agreement.

4.6 If any of the Source Materials held in escrow by ESCROW AGENT shall be attached, garnished or levied upon pursuant to an order of court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Source Materials or any part thereof of any act of ESCROW AGENT, ESCROW AGENT is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case ESCROW AGENT obeys or complies with any such order, judgment or decree, ESCROW AGENT shall not be liable to LICENSEE, LICENSOR or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

4.7 ESCROW AGENT shall, at its expense, indemnify, defend, and hold harmless LICENSEE, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any breach of Section 4.3.

5. Termination. LICENSEE and LICENSOR may terminate this Agreement by mutual written agreement, giving 60 days notice to ESCROW AGENT. This Agreement may also be terminated in accordance with the terms of Section 2.

6. Good Faith Reliance. ESCROW AGENT shall act in good faith reliance upon any instruction, instrument, or signature believed in good faith to be genuine and may assume that any person purported to give any writing, notice, respect, advice, or instruction in connection with or relating to this Agreement has been duly authorized to do so.

7. Fees. ESCROW AGENT shall be entitled to reasonable compensation for performance of its duties hereunder and for establishment of the escrow described herein. LICENSOR shall pay for the costs to establish, maintain, and verify the escrow described herein.

8. Entire Agreement. Except to the extent this Agreement incorporates by reference specific sections of or definitions from the Provider Compensation Subsystem Agreement, this Agreement constitutes the entire Agreement among the parties, including the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, either oral or written between the parties. This Escrow Agreement is intended to be and shall be treated as an agreement separate and distinct from the Provider Compensation Subsystem Agreement.

9. Notice. Notice will deemed to be given by the parties under the Agreement if in writing and delivered personally or by messenger, by telecopier or facsimile, or mailed by first-class, registered, or certified mail, postage prepaid, to the addresses noted below the signatures on the Agreement. Each party will provide notice to the other of changes to such addresses.

10. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Washington. LICENSOR and ESCROW AGENT consent to personal jurisdiction in that State. The exclusive venue of any action hereunder, including arbitration (if any), shall be in State courts of Thurston County, Washington.

11. Severability. In the event any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

12. Headings. The headings in this Agreement do not form a part of it, but are for convenience only and shall not limit or affect the meaning of the provisions.

13. Provider Compensation Subsystem Agreement Terms. Capitalized terms not defined in this Agreement shall have the meanings provided in the Provider Compensation Subsystem Agreement. However, to the extent this Agreement is in conflict with the Provider Compensation Subsystem Agreement, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the Effective Date.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES

Name: _____
Title: _____
Date: _____
Notice Address: _____

Name: _____
Title: _____
Date: _____
Notice Address: _____

Attn: _____
Facsimile No.: _____

Attn: _____
Facsimile No.: _____

APPROVED AS TO FORM:
ATTORNEY GENERAL'S OFFICE

By: _____
Printed Name: _____
Title: _____
Date: _____

ESCROW AGENT

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT E

LETTER OF CREDIT

Bank _____

_____, 200__

Irrevocable Letter of Credit

Number: _____

Amount: US\$800,000

To whom it may concern:

At the request and for the account of the State of Washington Department of Social and Health Services we hereby establish our Irrevocable Letter of Credit Number _____ in your favor, available by draft(s) at sight on Bank _____, up to the aggregate sum of \$800,000 (Eight Hundred Thousand United States Dollars), inclusive of any banking charges effective as of today's date and expiring at the end of the Warranty Period for the System as defined in contract # ____ dated as of _____, __, 200__.

Partial drawings are permitted. Drafts drawn under this Letter of Credit must be accompanied by the following document:

A Certificate signed by the _____ to the effect that the amount drawn represents funds due and payable to you because of the following reason:

Nonperformance of the Contractor (_____) pursuant to contract # _____ dated as of _____, 200__ for designing, developing, implementing, operating and maintaining the new DSHS Provider Compensation Subsystem.

We hereby agree with the drawers, endorsers and holders in due course of any draft under this Letter of Credit that such drafts shall be duly honored on presentation provided that all terms and conditions of the Letter of Credit have been complied with.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) International Chamber of Commerce Publication Number 500, as modified from time to time.

Yours faithfully,

For and on behalf of

Bank _____

By: _____

Title: _____

EXHIBIT F

BUSINESS ASSOCIATE TERMS

HIPAA Compliance.

a. Definitions.

- (1) “Business Associate” means the “Contractor”, as used in this contract and as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of the Covered Entity that involves the use or disclosure of client protected health information (PHI). Any reference to Business Associate in this contract includes Business Associate’s employees, agents, officers, subcontractors, third party contractors, volunteers, or directors.
- (2) “Covered Entity” means DSHS, a Covered Entity as defined in 45 CFR 160.103.
- (3) “Disclosure” means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.
- (4) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USCA §1320d-d8 and amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), enacted as part of the American Recovery and Reinvestment Act of 2009 ("ARRA"), and its attendant regulations and guidance as issued by, but not limited to, the U.S. Department of Health and Human Services (HHS) and the Office for Civil Rights (OCR).
- (5) "Healthcare Operations" means the activities of the covered entity to the extent that the activities are related to covered functions and as defined in 45 CFR § 164.501.
- (6) “Individual” means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (7) “Minimum Necessary” means the PHI limited to the limited data set as defined in 45 C.F.R. § 164.514(e)(2), to the extent practicable; or if needed, to the minimum necessary to accomplish the intended purpose for the use, disclosure or request of PHI ; provided, the definition of "minimum necessary" shall be controlled by guidance issued by the Secretary of HHS upon the effective date of such guidance.
- (8) “Protected Health Information (PHI)” means information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual. 45 CFR § 160.103. PHI includes

demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR §160.103. PHI is information transmitted or held in any form or medium. 45 CFR § 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA § 1232g(a)(4)(B)(iv).

- (9) "Reasonable in Amount" for purposes of Section (c)(7)(A) of Exhibit F shall have the meaning given such term by the Secretary of HHS by regulation.
- (10) "Use" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

b. Compliance.

- (1) Performance of Duties. Business Associate shall perform all contract duties, activities and tasks in compliance with HIPAA and other applicable law. Business Associate shall not act or fail to act in a manner that would cause DSHS to not be in compliance with HIPAA and other applicable law.
- (2) Breach. If Business Associate breaches Business Associate's obligations under the terms of this contract, DSHS may terminate this contract upon notice to Business Associate. If termination is not feasible, DSHS will report the problem to the Secretary of HHS.
- (3) Consent to Audit. Business Associate shall give reasonable access to DSHS client PHI, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to HHS and/or to DSHS for use in determining DSHS' compliance with HIPAA privacy and/or security requirements. Business Associate shall notify client, in advance, if possible, or as soon as thereafter possible, of a DSHS request for access and shall provide to client a copy of all information disclosed to DSHS.

c. Use and Disclosure of PHI. Business Associate is limited to the following permitted and required uses or disclosures of DSHS client PHI:

- (1) Minimum Necessary Standard. Business Associate shall apply the Minimum Necessary standard to any use or disclosure of DSHS client PHI necessary to achieve the purposes of this contract.
- (2) Disclosure as Part of the Provision of Services. Business Associate shall only use or disclose DSHS client PHI as required to perform the services specified in this contract or as required by law, and shall not use or disclose such PHI in any manner inconsistent with the use and disclosure restrictions placed on the Covered Entity by HIPAA or other applicable state or federal law.
- (3) Reporting. Within two (2) calendar days of becoming aware of an unauthorized use or disclosure of the PHI or of a security incident, Business Associate shall

report to DSHS in writing all uses or disclosures of PHI not provided for by this contract and/or any security incident, as defined in 45 CFR § 164.304. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible use or disclosure or the security incident.

- (4) **Breach Notification.** Business Associate agrees to implement response programs that specify actions to be taken when Business Associate detects or becomes aware of unauthorized access to information systems. As part of such response programs, Business Associate agrees to notify DSHS, by facsimile or telephone, of any breach or suspected breach of its security related to areas, locations, or computer systems which contain unsecured PHI, including, without limitation, any instance of theft, unauthorized access by fraud, deception, or other malfeasance or inadvertent access (an "Incident") in accordance to 45 C.F.R. §164.410 as promptly as possible, upon having reason to suspect that an Incident may have occurred, and typically prior to beginning the process of verifying that an Incident has occurred or determining the scope of any such Incident, but in no event later than two (2) calendar days after discovery of a breach by Business Associate or its agents. In the event of any such Incident, Business Associate shall further provide to DSHS, in writing, such details concerning the Incident as DSHS may request, and shall cooperate with DSHS, its regulators and law enforcement to assist in regaining possession of such unsecured PHI and prevent its further unauthorized use, and take any necessary remedial actions as may be required by DSHS to prevent other or further Incidents. If DSHS determines that it may need to notify any individual(s) as a result of such Incident that is attributable to Business Associate's breach of its obligations under this Agreement, Business Associate shall bear all reasonable direct and indirect costs associated with such determination including, without limitation, the costs associated with providing notification to the affected individuals, providing fraud monitoring or other services to affected individuals and any forensic analysis required to determine the scope of the Incident. In addition, Business Associate agrees to update its initial notice of such Incident to include, to the extent possible and as soon as possible working in cooperation with DSHS, the identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Incident and any the following information DSHS is required to include in its notice to the individual pursuant to 45 C.F.R. §164.404(c): (i) a brief description of what happened, including the date of the Incident and the date of discovery of the Incident, if known; (ii) a description of the types of unsecured PHI that were involved in the Incident (e.g. Social Security number, full name, date of birth, address, diagnosis); (iii) any steps the individual should take to protect themselves from potential harm resulting from the Incident; (iv) a brief description of what is being done to investigate the Incident, mitigate the harm and protect against future Incidents; and (v) contact procedures for individuals to ask questions or learn additional information which shall include a toll-free number, an e-mail address, Web site, or postal address (subsection v is only applicable if DSHS specifically requests Business Associate to establish contact procedures). Such

additional information must be submitted to DSHS immediately at the time the information becomes available to Business Associate.

- (5) DSHS Notice of Requests for Disclosure. DSHS will notify Business Associate when DSHS client PHI is requested from DSHS that has been previously provided to Business Associate by DSHS. Business Associate shall cooperate with DSHS with regard to such request.
- (6) Sale of PHI: Business Associate shall not directly or indirectly receive remuneration in exchange for any DSHS client PHI unless pursuant to an authorization by the individual in accordance with 42 CFR §164.508 that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that individual; provided, Business Associate may receive remuneration in exchange for any DSHS client PHI notwithstanding the individual's authorization, as provided by regulations to be issued by the Secretary of HHS, upon the effective date of such regulations. However, in no instance may Business Associate receive remuneration in exchange for DSHS client PHI without DSHS's express written authorization.
- (7) Marketing with PHI: A communication by a Business Associate that is described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in 45 CFR §164.501 for which the Business Associate receives or has received direct or indirect payment (excluding payment for treatment as defined in 45 CFR §164.501) in exchange for making such communication may be made without the authorization of the individual to which the PHI relates if:
 - (A) such communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication; and any payment received by such covered entity in exchange for making a communication is Reasonable in Amount; or
 - (B) the communication is made by a Business Associate on behalf of the covered entity; and the communication is consistent with the Business Associate Terms between DSHS and Business Associate. Provided, no communication relating to marketing may be made by the Business Associate without written authorization by DSHS.
- (8) Fundraising with PHI: Any written fundraising communication that is a healthcare operation shall, in a clear and conspicuous manner and consistent with guidance provided by the Secretary of HHS, provide an opportunity for the recipient of the communications to elect not to receive any further such communication. An election not to receive any further such communication shall be treated as a revocation of authorization under section 45 CFR § 164.508.

d. Safeguarding PHI.

- (1) Duty to Protect DSHS Client PHI. Business Associate shall protect PHI from, and shall establish appropriate safeguards to prevent, the unauthorized disclosure

of PHI in accordance with the terms and conditions of this contract and state and federal law, including any regulations governing the security of PHI and the transmission, storage or maintenance of electronic data that contains PHI, for as long as the PHI is within its possession and control, even after the termination or expiration of this contract. Moreover, Business Associate must implement and otherwise comply with the DSHS Data Security Requirements set forth in Exhibit H and: the Administrative Safeguards specified in 45 CFR §164.308; the Physical Safeguards specified in 45 CFR §164.310; the Technical Safeguards specified in 45 CFR §164.312; and the Policies and Procedures and Documentation Requirements specified in 45 CFR §164.316. (2) Return of DSHS Client PHI. Business Associate shall, within ten (10) working days of termination or expiration of this contract, in accordance with Contract Termination and Expiration Procedures and at the discretion of DSHS, either return or destroy all PHI received from DSHS, or created or received by Business Associate on behalf of DSHS, that the Business Associate still maintains in any form and retain no copies of such PHI. If such return or destruction is not feasible, as mutually agreed to by the parties, then Business Associate shall extend the protections of this contract to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible, for as long as the PHI is within the Business Associate's possession and control, even after the termination or expiration of this contract. The requirements of this provision extend to PHI in possession of third parties under contract to Business Associate.

- (3) Third Party Agreements. Business Associate shall enter into a written contract that contains the same terms, restrictions, and conditions as this HIPAA Requirements provision, with any agent, subcontractor, independent contractor, or other third party that has access to the DSHS client PHI accessible to Business Associate under the terms of this contract. Moreover, Business Associate shall ensure that any such agent, subcontractor, independent contractor, or other third party agrees to implement reasonable and appropriate safeguards to protect DSHS client PHI.

e. Individual Rights.

- (1) Access.
 - (a) Business Associate shall provide access to DSHS client PHI to DSHS, in the time and manner reasonably requested by DSHS.
 - (b) At the request of DSHS, Business Associate shall respond, in the time and manner reasonably requested by DSHS, to requests by individuals for access to their PHI.
 - (c) If any individual asks Business Associate for access to PHI, Business Associate shall within three (3) working days forward the request to DSHS for response; provided, any fee imposed for providing an individual

with a copy of PHI held in electronic format in the case that the Business Associate uses or maintains an electronic health record with respect to that individual, shall not be greater than the labor costs in responding to the request.

(2) Accounting of Disclosures

- (a) Business Associate shall document all disclosures of DSHS client PHI and such information related to such disclosures that DSHS is required to provide to a client to meet its obligations under HIPAA.
- (b) Business Associate shall document all disclosures of DSHS client PHI made pursuant to 45 CFR §164.528(a)(1)(i) if Business Associate uses or maintains an electronic health record with respect to PHI, and such information related to such disclosures, that Business Associate is required to account for pursuant to Section 13405 of the HITECH Act and in accordance with regulations to be issued by the Secretary of DSHS.
- (c) Within ten (10) working days of a request from DSHS, Business Associate shall make available to DSHS the information that is necessary for DSHS to respond to a request for an accounting of disclosures of DSHS client PHI. See 45 C.F.R. §§ 164.504 and 164.528.
- (d) At the request of DSHS, Business Associate shall respond, in the time and manner reasonably requested by DSHS, to requests by individuals for an accounting of disclosures of PHI.
- (e) If any individual asks Business Associate for an accounting of disclosures of DSHS client PHI, Business Associate shall within three (3) working days forward the request to DSHS for response.
- (f) Business Associate's record keeping procedures shall be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested except for disclosures that occurred prior to the HIPAA compliance date for DSHS.
- (g) Notwithstanding Section e(2)(f) above, if Business Associate uses or maintains electronic health records with respect to PHI, Business Associate's record keeping procedures shall be sufficient to respond to a request for an accounting of disclosures through an electronic health record made by Business Associate pursuant to 45 CFR §164.528(a)(1)(i) during the three (3) years prior to the date on which the accounting is received.
- (h) Notwithstanding 45 CFR § 164.522(a)(1)(ii), Business Associate must comply with an individual's request under 45 CFR § 164.522(a)(1)(i)(A) that Business Associate restrict the disclosure of PHI of the individual if the disclosure is to a health plan for purposes of carrying out health care

operations (and is not for purposes of carrying our treatment), as those terms are defined by HIPAA and the HITECH Act and except as otherwise provided by law; and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

- (3) Amendment. If DSHS amends, in whole or in part, a record or PHI and DSHS has previously provided the PHI or record that is the subject of the amendment to Business Associate then DSHS will inform Business Associate and Business Associate shall amend any record or PHI of a DSHS client in the time and manner requested by DSHS. If any individual asks for an amendment, Business Associate shall within three (3) working days forward such request to DSHS for response.
- f. No Third Party Beneficiaries. Except as expressly provided in this contract, nothing in this contract shall or shall be construed to give rights or benefits to any person not a party to this contract.

EXHIBIT G
REVISIONS TO THE RESPONSE

EXHIBIT H

DSHS DATA SECURITY REQUIREMENTS

1. Protection of Data

Contractor shall store Data on one or more of the following media and protect the Data as described:

a. Hard disk drives

Data stored on local workstation hard disks. Access to the Data will be restricted to authorized users by requiring logon to the local workstation using a unique user ID and complex password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.

b. Network server disks

Data stored on hard disks mounted on network servers and made available through shared folders. Access to the Data will be restricted to authorized users through the use of access control lists which will grant access only after the authorized user has authenticated to the network using a unique user ID and complex password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

c. Optical discs (CDs or DVDs) in local workstation optical disc drives

Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a secure area. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only authorized users have the key, combination or mechanism required to access the contents of the container. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

d. Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers

Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a secure area. Access to Data on these discs will be restricted to authorized users through the use of access control lists which will grant access only after the authorized user has authenticated to the network using a unique user ID and complex password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is

accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

e. Paper documents

Any paper records must be protected by storing the records in a secure area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

f. Access via remote terminal/workstation over the State Governmental Network (SGN)

Data accessed and used interactively over the SGN. Access to the Data will be controlled by DSHS staff who will issue authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor will notify DSHS staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employ of the contractor, and whenever a user's duties change such that the user no longer requires access to perform work for this contract.

g. Access via remote terminal/workstation over the Internet through Secure Access Washington

Data accessed and used interactively over the SGN. Access to the Data will be controlled by DSHS staff who will issue authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor will notify DSHS staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employ of the contractor and whenever a user's duties change such that the user no longer requires access to perform work for this contract.

h. Data storage on portable devices or media

DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the Special Terms and Conditions of the contract.

If so authorized, the Data shall be given the following protections:

- Encrypt the Data with a key length of at least 128 bits
- Control access to devices with a unique user ID and password or stronger authentication method such as a physical token or biometrics.
- Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.

Physically protect the portable device(s) and/or media by:

- Keeping them in locked storage when not in use

- Using check-in/check-out procedures when they are shared, and
- Taking frequent inventories

When being transported outside of a secure area, portable devices and media with confidential DSHS Data must be under the physical control of contractor staff with authorization to access the Data.

Portable devices include, but are not limited to; handhelds/PDAs, Ultramobile PCs, flash memory devices (e.g. USB flash drives, personal media players), portable hard disks, and laptop/notebook computers if those computers may be transported outside of a secure area.

Portable media includes, but is not limited to; optical media (e.g. CDs, DVDs), magnetic media (e.g. floppy disks, tape, Zip or Jaz disks), or flash media (e.g. CompactFlash, SD, MMC).

2. Data Segregation

DSHS Data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach.

DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data. Or,

DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. Or,

DSHS Data will be stored in a database which will contain no non-DSHS data. Or,

DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records. Or,

When stored as physical paper documents, DSHS Data will be physically segregated from non-DSHS Data in a drawer, folder, or other container.

When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

3. Data Disposition

When the contracted work has been completed or when no longer needed, whichever is earlier, Data shall be returned to DSHS or destroyed in accordance with DSHS IT Security Policy.

Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks	Using a “wipe” utility which will overwrite the Data at least three (3) times using either random or single character Data Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or confidential Data	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing confidential information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a course abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding
Removable media (e.g. floppies, USB flash drives, portable hard disks, Zip or similar disks)	Using a “wipe” utility which will overwrite the Data at least three (3) times using either random or single character Data Physically destroying the disk Degaussing magnetic media sufficiently to ensure that the Data cannot be reconstructed

4. Notification of Compromise or Potential Compromise

The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Project Director within one business day of discovery.

5. Data shared with Subcontractors

If DSHS Data provided under this Agreement is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Data security provisions within this Agreement and within any amendments, attachments, or exhibits within this Agreement. If Contractor cannot protect the Data as articulated within this Agreement, then the contract with the Subcontractor must be submitted to the DSHS Project Director for review and approval.